JOHN SELDEN,

OF THE

JUDICATURE

IN

Parliaments,

A

Posthumous TREATISE:

WHEREIN,

The *Controversies* and *Precedents* belonging to that Title, are Methodically handled.

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A Scheme of the *Method* and *Contents*.

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JUDICA-

JUDICATURE IN Parliament.

CHAP. I.

Peers to render Judgment on Peers.

THE Execution of all our Laws hath been long ſince diſtributed by *Parliament* out of inferiour Courts, in ſuch ſort as the Subjects were directed where to complain, and the Juſtice how to redreſs wrongs and puniſh offences: And this may be the reaſon of the Judges opinion in *Thorps* Caſe, 31. *Hen.* 6. *Num.* 37.

That Actions at Common-Law are not determined in this High Court of *Parliament*, yet complaints have ever been received in *Parliaments* as well of private wrongs as publick offences. And according to the quality of the Perſon, and nature of the offence, they have been retained or referred to the Common-Law.

Touching the quality of the Perſon the Lords of the *Parliament* did not anciently try any Offenders how great ſoever the offence was, unleſs he were their Peer. As by that of 4 *E.* 3. *N.* 2. where when the King commanded the Lords to give Judgment on *Simon de Bereford*, and divers others alſo, who were not their Peers, for the murther of *E.* 2. and the deſtruction of the Earl of *Kent*, Son of *E.* the firſt. A proviſo and agreement was made and recorded in theſe words, *Et eſt aſſenſu & accord*, &c. And it is aſſented and accorded by our Lord the King, and all the Grandees in full *Parliament*. That albeit the Peers as Judges of the *Parliament* have took upon them, and rendred the ſaid Judgment, *&c.* That yet the ſaid Peers who now are, or ſhall be in time to come be not bound or charged to render Judgments

Peers to render Judgment on Peers.

ments upon others than Peers. Nor that the Peers of the Land have power to do this, but thereof ever to be diſcharged and acquitted; And that the aforeſaid Judgment rendred be not drawn to example or conſequence in time to come, whereby the ſaid Peers ſhall do contrary to the Laws of the Land if the like Caſe happen, which God forbid. 4 *E* 3. *N.* 6. This Proviſo and agreement was made by the Lords and Commons, and it had theſe reſpects. Firſt to ſatisfy the Commons, that the Lords by theſe Judgments intended not to alter the courſe of the Common-Law, and therefore they diſclaimed that they had power to do this, and confeſs it was contrary to the Law of the Land. *Quite contrary to the Law of the Land.*

Secondly to preſerve their own Right, to Judge none but the Peers, in Caſe of Life and Death. For then the Kings Steward is to ſit in the Chancellors place and the Lords are to be Tryers and Judges: And ſo by judging others then their Peers deſcended below their degrees, For none but Peers are ſo to be Tryed and Judged. It is otherwiſe in Caſes of miſdemenors, then the Chancellor keeps his Place, and the Lords are only Judges and not Tryers, they

may command a Jury to be Impannelled.

For Tryal of the Facts, if the truth appear not by the Parties anſwer, the Teſtimonies are Exhibited as 1 *R.* 2. in the Caſe of *Alice Peirce*. Here ariſeth a Queſtion.

How Biſhops are tryable.

Whether the Spiritual Lords de Jure, *are tryable by their Peers or no?*

Out of *Parliament* they are not to be Tryed by the Peers; But the doubt is, whether in time of *Parliament* they are to be ſo Tryed or no? To me it ſeems they may, if the matter be moved againſt them in time of *Parliament*. For as it is in the *Parliament* at *York*, 15 *E.* 2. in the Act for the Repeal of the *Spencers* baniſhment, they are Peers in *Parliament*. Note, that the Petition for the Repeal ſaith that the Biſhops are Peers in *Parliament*. The Biſhops name themſelves Peers of the Land: And the Chancellor to the King. And the Act ſtile them Peers of the Land in *Parliament*.

There be divers Preſidents alſo of the Tryal of Biſhops by their Peers in *Parliament*, as well for Capital offences as miſ-

miſdemenors, whereof they have been accuſed in *Parliament*. As the Archbiſhop of *Canterbury*, 15 *E.* 3. *N.* 6, 7, 8. *Et ibid. poſtea*, 44 & 39. *Et ibid.* 17 *E.* 3. 22. And the Biſhop of *Norwich*. 7. *R.* 2. for miſdemeanors: So were the Biſhops of *York* and *Chichester*, Tryed for Treaſon by their Peers in *Parliament*, upon the Appeal of the Lords Appellants, 11 *R.* 2.

Anno 21 *R.* 2. The Commons accuſed the Archbiſhop of *Canterbury* of Treaſon, and the temporal Lords judged him a Traytor, and baniſhed him: But if the Biſhop be accuſed out of *Parliament*, he is to be tryed by an Ordinary Jury of Free-holders; for his honour is not inheritable, as is the temporal Peers out of *Parliament*, ſave that only of their Tryal. As no day of Grace to be granted againſt them in any Suit. A Knight to be returned upon the Pannel where a Biſhop is party, and no Proceſs in a civil action to be awarded againſt his body, and the like. And by this it appeareth what Perſons are *de Jure*, tryable by the Lords in *Parliament*, viz. their Peers only.

The nature of the offence.

Touching the nature of the Offence.

Herein the complaint and accuſation as well of the Party delinquent as offence is to be conſidered. For upon the Information of the King at his Commandment, or upon complaint of private Perſons, the Lords may not by the Law try any but their Peers for Capital offences. And the Lords have ever referred offences of other nature complained of by private Perſons to the Common-Law, if there be remedy, unleſs ſome ſpecial cauſe appear fit for their own Judgment.

But upon complaints and accuſations of the Commons, the Lords may proceed in Judgment againſt the Delinquent of what degree ſoever, and what nature ſoever the offence be. For where the Commons complain, the Lords do not aſſume to themſelves tryal at Common-Law. Neither do the Lords at the tryal of a Common Impeachment by the Commons, *decedere de jure ſuo:* For the Commons are then in ſtead of a Jury, and the Parties anſwer, and examination of witneſſes, are to be in their Preſence, or they to have Copies thereof;

thereof: And the Judgment is not to be given but upon their demand, which is in ſtead of a verdict, ſo the Lords do only judg not try the Delinquent. In the Lords proceedings in Judicature is obſerved alſo a certain form, which varieth according to the nature of the complaint, and the matter complained of; ſo that no general Rules can be given therein, though many Judgments have been reverſed for errors, whereof there be many Precedents. And the Execution upon life and death, hath been ſtayed at the Requeſt of the Commons, the proceedings being illegal, whereof I have ſeen only one Precedent, touching the Duke of *Clarence*, *tempore E.* 4. Wherefore for our better underſtanding of the Form of Judicature, let us firſt conſider the ſeveral cauſes wherein Judicature belongs to the *Parliament*, and then the ancient way of proceedings in each Cauſe.

CHAP. II.

In what Cases, &c.

In what Caſes Judicature belongs to the Parliament.

JUdicature belongs to the *Parliament* in theſe ſix Caſes.

1. In Judgments againſt Delinquents as well for Capital crimes as miſdemeanors, wherein is to be conſidered,

1. *The Accuſation.*
2. *The Parties Anſwer.*
3. *The Replication.*
4. *The proof by Examination of witneſſes, or otherwiſe.*
5. *The Judgment.*
6. *The Execution.*

2. In the Reverſing erronious Judgments in *Parliament* are to be conſidered,

1. *The Petition.*
2. *The bringing in the Record.*
3. *The Aſſignment of Errors.*
4. *The Reverſal thereof.*

3. In

3. In the Reverſing of erronious Judgments given in the Kings Bench are to be conſidered

1. *The Petition.*
2. *The Writ of Error.*
3. *The bringing in the Record.*
4. *The Aſſignment of Errors.*
5. *The Writ of Scire facias.*
6. *The Defendants anſwer.*
7. *The Reverſal of the Judgment.*

4. In deciding of Suits long depending either for difficulty or delay, wherein is to be conſidered

1. *The Petition.*
2. *The advice with the Judges.*
3. *The determination of the Lords.*

5. In hearing complaints of particular Perſons on Petitions, wherein is to be conſidered,

1. *The Petition.*
2. *The Defendants anſwer.*
3. *The Proof.*
4. *The Orders of the Lords.*

6. In ſetting at Liberty any of their own Members or Servants impriſoned, and in ſtaying the proceedings at the Common-Law during the Priviledge of *Parliament*, wherein conſider,

1. *The Quality of the Perſon Impriſoned.*
2. *The Parties Anſwer at whoſe Suit he is impriſoned.*
3. *The manner of his Charge.*

In certifying the Elections and Returns of Knights and Citizens for the *Parliament*. But now the Commons alone determine of this: Wherefore I will only ſhew that the Commons did heretofore Petition to the Lords for redreſs herein, and what courſe was then taken. I leave it to the Clerk of that Houſe to ſhew how the Commons proceed herein at this day. Of the reſt in Order; And firſt,

Of Judgments on Delinquents.

Of Judgments on Delinquents.

§ 1. In Judgment againſt Delinquents, is firſt to be conſidered, *the Accuſation*. For as in the Kings Bench the

the Juſtices proceed not to the Arraignment of any Offender without an Indictment, So the Lords have not proceeded to Judgment, unleſs the Crimes have firſt been preſented to them by way of *Accuſation*: If otherwiſe their Judgments have been reputed erronious, as that againſt the *Spencers* was in 15 *E.* 2. *Rot.* 2. *clauſ. lit. penden.* For the ſame Perſons cannot be both Accuſers and Judges.

I have obſerved four manner of *Accuſations* in *Parliament.*

Four manner of Accuſations in Parliament.

1. *Firſt by the Commons, either by their Complaints, or their Impeachments.*
2. *Secondly by Information.* Ex parte. Dom. Regis.
3. *Thirdly by Complaint of private Perſons.*
4. *Fourthly by Appeal of ſome of the Lords in Parliament, which was aboliſhed,* p. Stat. 1. H. 4. c. 14.

The Accuſation of the Commons.

The manner of Accuſation ought to be by the Commons alone, and not by the Lords and them together, for ſo,

Earls,

Earls, Prelates, Barons, and other Peers of the Land, and Commons of the Realm, did accuſe *Hugh de le Spencer*, 15 *E.* 2. and one of the Errors aſſigned for the Reverſal was, that the Lords had no Record before them of the Cauſes contained in their Award, *viſ. Rot. claus.* 15 *E.* 3. in the *Parliament* at *York*. The Reaſons may be, becauſe the Lords joyning in the Accuſation with the Commons, have declared their opinion of the Fact, and there needs no further Tryal thereof. Wherefore the Lords who are only Judges may neither accuſe any to themſelves, nor joyn in the Accuſations with others.

The complaint of the Commons is either by Petition or demand in general, or by Impeachment in particular which is their Declaration againſt the party accuſed.

Complaints by Petitions.

Precedents of their Complaints by Petition are.

Anno 21 *E.* 3. *n.* 38. The Commons complain of Extortion uſed by certain Merchants, who were Farmers of the Kings Cuſtoms of Wools, not naming the Parties, for which they pray remedy and

and that the ſaid Merchants may be put to their anſwer in this *Parliament* for ſuch outrage and diſtreſs done to the people. Which Petition is thus anſwered.

Let the Merchants be called into the Parliament, *Et oient lour Reſpons*, *In eodem Parl. n.* 49. The Commons in another Petition complain: That whereas diverſe aids have been granted to the King for his Wars, certain Merchants by confederacy between them, and in manner of uſury have bargained for the ſame, to the Kings great loſs, and the grievance of the Commons, *&c.* His people pray theſe Particulars may be examined, in preſence of ſome by the ſaid Commons deputed by good wiſe and Loyal men during the *Parliament*. *Petition.*

The King ſhall aſſign ſome of the Sages of his Council to hear, and determine the things contained in this Article. And if any of the Commons can inform the King, for his profit of any of the Points herein contained, let him put it in certain, and he ſhall be heard, to the end that Right and reaſon may be done. *Reſpons.*

And the Juſtices which ſhall be aſſigned to enquire of falſe Mony, ſhall have

have power to enquire of the exceſs of ſuch Miniſters. Though theſe complaints were general, yet they pointed ſo directly to the Parties accuſed, that *John de Worſenham*, and *Walter de Chairton*, did exhibit their Petitions alſo in their own defence, deſiring to come to their Anſwers. What further proceedings were herein is not recorded; The Commons were directed to impeach the Parties whom they accuſed. *If any of the Commons can inform, &c. Let him inform in certain, and he ſhall be heard, &c.* So that although the Commons accuſation by complaint be general, yet if the complaint be received, and the Parties brought to anſwer, the Commons may then impeach the ſaid Parties, *viz.* declare againſt them in ſpecial; and then the Suit is theirs, *prout*. *Anno* 50 *E.* 3. againſt *Lyons*, *Ellis*, the Lord *Latimer*, the Lord *Nevile*, *Peecher* and others.

But if the Commons do only accuſe by any way of complaint whatſoever, and do not declare in ſpecial againſt the Party accuſed, then the Suit is the Kings, and the Party is to be arraigned, or otherwiſe proceeded againſt by commandment, *Ex parte Dom. Regis, prout Com-*

Gomeniz Weſton, and *Alice Peirce*. 1 *R.* 2.

Anno 1 *H.* 4. The Commons pray the Lords Apellants in the 21 *R.* 2. may be put to their anſwer, and ſo they were 10 *Placit. Coron.* of that *Parl. n.* 1. 2. 3. *&c.*

Anno 29 *H.* 6. The Commons pray that the Duke of *Somerſet*, the Dutcheſs of *Suffolk*, the Biſhop of *London*, and many others may be abandoned from the Kings Preſence during their lives, and not come within twelve Miles of the Court, for that the people ſpoke evil of them.

The King of his own meer motion is contented that all ſhall depart, unleſs they be Lords, and a few of them whom he may not ſpare from his preſence, and ſo to continue one year, to ſee if any man can miſprove them. *n.* 6. *inter Petitiones Communium.* For this was no Accuſation, for the Commons did not require they might be baniſhed the Court. *Anſwer.*

Anno 38 *H.* 6. The Commons among their Petitions accuſe the Lord *Stanley* of ſundry Particulars, as to be of confederacy with the Duke of *York*, and pray he may be committed to Priſon.

The

Answer. *The King will be adviſed.*

Primo. Jac. 26 *Maii.* The Commons by meſſage accuſe the Biſhop of *London*, for words ſpoken of them in the upper Houſe. Of the other kind of complaint by way of demand, I have ſeen theſe two Precedents only.

Anno 1 *R.* 2. The Subſidy to be treated upon between the Lords and Commons, as the manner then was; The Commons delivered to the Lords a Schedule of their demands to be diſpatched before Treaty ſhould proceed. Amongſt which one was, That all ſuch who without Cauſe have loſt or given up any Caſtle, Town, or Fortreſs, to the diſhonour of the King, and damage of the People, may be put to their Anſwer before the Lords and Commons in this preſent *Parliament*.

The Complaint herein is general, They accuſe ſuch as had delivered up Caſtels, *&c.* if it be an Accuſation: But they name not the Parties, yet two Delinquents hereupon who were Impriſoned in the Tower, for delivery of Caſtels, *&c.* were put to their Anſwer, *viz. Gomeniz* and *Weſton*, *Anno* 7 *R.* 2.

The

The Commons grant a Subſidy, according to the Tenor of a Schedule indented delivered in Parliament, requiring it may be enrolled in the Parliament Roll *verbatim*; in which Schedule is this Proteſtation, That it is not their meaning to grant the ſaid Subſidy, without the Conditions enſuing.

Inprimis, That the Clergy make the like Grant.

Item, That the Biſhop of *Norwich*, and others, be compelled to anſwer ſuch Sums, as they have received for Service by them undertaken, and not performed, *&c. Numb.* 13.

Here the Commons name one of the Parties, againſt whom they complain, but they impeach him not; and yet he, and divers others, were cenſured on that general demand.

Impeachments of the Commons.

Of the Impeachments of the *Commons*, there be theſe Precedents: *Anno* 50. *E.*3. The *Commons* having granted the Subſidy, they proteſted their good will, and firm purpoſe, to aid the King; and ſaid, That it ſeemed to them for truth, that if the King had always about him Loyal Subjects, good Councellors, and faithful Officers, he had been rich in Treaſure,

and needed not have charged his *Commons* with Subſidies, *&c.* Then they deſired that three things might be enquired of.

1. Firſt, the withdrawing the Staple from *Callis*, by the Council and Procurement of ſome Privy Councellors about the King.

2. Secondly, of Loans to the King by way of Uſury, receiving again greater Sums than they diſburſed, wherein ſome Privy Councellors have been Partners.

3. Thirdly, of buying the King's Debts by way of Bargain, ſome for the 10th Peny, ſome for the 20th, or 100th Peny, and procuring the King to pay the entire Debt; to the King's loſs, and profit of ſome Privy Councellors, and others of their Covyn: Of which three Articles, and their Dependencies, the *Commons* ſaid, They would make farther Declaration in ſpecial, whenſoever it ſhall pleaſe the King to hear them, *Numb.* 15, 16. Then follows their particular Impeachments and Accuſations.

Firſt,

First, *Richard Lyons*, Merchant of *London*, is impeached and accuſed by the Commons of many Deceits, Extortions, and many other ill deeds by him done to our Lord the King, and his People, as well during the time he was retaining to the King's Houſe, and to the King's Council, as otherwiſe, whilſt he was Farmer of the Subſidy and Cuſtoms of the King. And in ſpecial of this, that the ſaid *Richard*, by Covyn made between him, and ſome of the Privy-Council of our Lord the King, for their private Profit and Advantage, hath procured many Patents, and Writs of Licenſe, to tranſport great quantities of Wools, and Wool-fells, and other Merchandize beyond the Seas, to other places than the Staple at *Callis*, contrary to the Ordinances, *&c.* And ſo they declare of many other Villanies in great deceipt of the King, and of his Court. Whereunto the ſaid *Richard* being then preſent in Parliament, ſaid, *&c.*

Then follows his Anſwer in particular to what was particularly alledged againſt him, and in general to what was generally charged upon him.

The Lords reaſſured him for that which was particularly objected againſt

him, and granted Commiſſions to enquire of the Extortions wherewith he was charged in general.

Then the Commiſſioners in like manner accuſed and impeached *William* Lord *Latimer* of divers Extortions, Grievances, Deceits, and ill Deeds, *viz.* of divers Oppreſſions, when he ſerved the King in *Britain*, for being Partner with *Richard Lyons*, *&c.* and for loſs of Towns and Forts beyond the Seas. *Numb.* 21.

Item, *William Ellis* of *Great Yarmouth* was impeached in this preſent Parliament in divers manners.

Firſt, by Surmiſe of the Commons, *&c.* Numb. 11.

And afterwards *John Bothail*, and *William Cooper*, exhibited their two Bills in form which followeth:

To their thrice redoubted Lord the King, and to the ſaid Council ſhewn, &c. complaining of the Oppreſſions of the ſaid *William Ellis*, unto them, and others, *&c.* and their Oath was taken againſt him. *Numb.* 32.

Item, *John Peecher* of *London*, Merchant, was accuſed and impeached by the

the ſaid Commons, That he, by the aſſent and aid of *Richard Lyons*, and of other Privy Councellors, for their private profit and advantage, have purchaſed a Patent under the Great Seal of our Lord the King, containing that none ſhall ſell ſweet Wines within the Franchiſes of the City of *London*, but only the ſaid *John*. Numb. 38.

Item, *John Nevill* was likewiſe impeached, *&c.* for buying the King's Debts, *&c.* and for loſs of Towns beyond the Seas.

Here I obſerve, that though the Commons complained, 50 *E.* 3. but of three Grievances, *viz.* of the withdrawing the Staple from *Callis*; of Loans to the King upon exceſſive Uſury; and of buying the King's Debts; yet when they who were accuſed appeared, they declared againſt them for other matters alſo: As againſt *Lyons*, for new Impoſitions upon Wools, without aſſent in Parliament; and againſt the Lord *Latimer*, for his miſgovernment beyond the Seas, and loſs of Forts there; and againſt *Peecher*, for a Monopoly of ſweet Wines, *&c.* *Obſerve.*

I obſerve alſo, that their Declaration is not made according to the ſtrict forms *Obſerve.*

of Law, as you may perceive by that againſt *Lyons*, wherein ſo many Extortions are ſo generally ſet down againſt him, that he made no anſwer to them, neither could, *&c.* Which Impeachment the Lords notwithſtanding did not reject, but ſupplied the defects thereof, by granting Commiſſions to enquire thereof. *Ibid. Numb.* 20. *in fine.*

Item, In this Parliament of 50 *E.* 3. an Ordinance was made againſt Women's purſuing buſineſſes in the King's Court, and eſpecially againſt *Alice Peirce*, *Numb.* 45. I find no Accuſation againſt *Alice Peirce*; I only conjecture that the Commons complained of her, though it be not entred, for ſhe is in the number of them whom in the next Parliament of 50 *E.* 3. *Numb.* 87. the Speaker of the Commons names to be unjuſtly convicted in this Parliament: And none were there convicted, but thoſe whom the Commons complained of.

Item, *Adam de Bury*, Citizen of *London*, was impeached by the clamor of the Commons in this Parliament of many Deceits, and other ill things done to the King, and to his People, whileſt he

he was Mayor of *Callis*, and Captain of *Bullingam*, and other ways, as more at large appears in one great Bill, delivered in Parliament the laſt day of this Parliament at *Eltham*. And thereupon the ſaid *Adam* was ſent for to come to anſwer in Parliament, and he came not, neither could be found. Wherefore it was awarded, that all his Goods and Chattels ſhould be put in Arreſt; and ſo it was done by Writs ſent to the Sheriffs of *London* and *Kent*: And the ſaid Bill is on File with the ſpecial Petitions of Parliament, 50 *E.* 3. *Numb.* 11.

Out of this laſt Precedent, concerning *Adam de Bury*, I obſerve two things:

1. Firſt, whom they complained of: The Lords ſent for him only to appear before them; they ſent not to apprehend him as a Delinquent, until he contemn'd their Demand, whereof more hereafter in the Title of the Parties Anſwer.

2. Secondly, that the Commons delivered not their Impeachment (that is, their Declaration) againſt the Party accuſed, until he appeared before the Lords, and then they kept it untill the laſt day of the Parliament, in hope that

he would be brought before the Lords; and when they ſaw he could not be found, they then delivered their Impeachment againſt him, to the end (as I concieve) the particulars of their Accuſation might remain upon Record againſt them hereafter.

Here I alſo obſerve an Error of the Clerk, that he hath omitted the Proceedings againſt *Alice Peirce*, *John de Leyceſter*, and *Walter Spooner*, who were all convicted in this Parliament, as appeareth by the Speaker's motion to the King for their Pardons in the next Parliament. 50 *E.* 3. *Numb.* 87.

Thus much touching the Commons Accuſations and Impeachments.

The next Precedent is in 11 *R.* 2. in which Parliament the whole Commons with one aſſent aſſembled, came before the King, Prelates, and Lords, in the Parliament Chamber, complaining grievouſly of *Michael de la Poole*, Earl of *Suffolk*, Chancellor of *England*, there preſent, accuſing him openly by word of Mouth:

1. Firſt, that whereas he being Chancellor, was bound by Oath to further the King's Profit and Commodity in all things;

things: He notwithſtanding contrary to the ſaid Oath, and not regarding the King's great neceſſity, had purchaſed of the King Lands and Tenements to a great value, procuring the ſame, by reaſon of his Office, to be Surveyed at an under value.

2. *Item*, Whereas at the laſt Parliament, nine Lords were appointed to ſee and examin the State of the King and Realm; which being done, and their Advice delivered to the King, as well by word as writing, by what means the ſame might beſt be remedied: The Chancellor promiſed in open Parliament, that the ſame ſhould be put in Execution, which was not done, through his default, he being a Principal Officer.

3. *Item*, Whereas the Subſidy, granted the laſt Parliament, was appointed by the aſſent of the King and Lords, in what ſort it ſhould be expended, and not other ways employed; in this was his default, he being Principal Officer.

4. *Item*, Whereas *John Tidman* had a certain Annuity from *E.* 3. which he had ſince forfeited, and the payment thereof was

was diſcontinued for the ſpace of 20 or 30 years: The ſaid Chancellor knowing this, purchaſed his Intereſt, and procured the King to confirm the ſame unto him, *&c.*

5. *Item*, That whereas the great Maſter of St. *Antony* being a Schiſmatic, had thereby forfeited to the King all his Revenue within this Realm, the ſame Chancellor had taken the ſame to Farm of the King for 20 Marks. And whereas the Maſter ſhould have livery thereof again, he could in no wiſe get the ſame, until he had bound himſelf to pay 100 *l.* yearly to the Chancellor and his Son.

6. *Item*, That during the time of his Chancellorſhip, there had paſſed divers Charters of Pardon, as well for Murders, Treaſons, and Felonies, as alſo for raſing of Rolls, and imbezelling of Laws and Records; and eſpecially ſince the beginning of this Parliament, a Charter of *Franchiſes* was granted to the Caſtle of *Dover*, to the diſinheritance of the Crown, and to the Subverſion of all the Places and Courts of the King, and his Laws.

7. *Item*,

7. *Item*, That at the laſt Parliament divers Sums were allotted for the defence of the Town of *Gant*, notwithſtanding the ſame Money was loſt, *&c.* by his default, *&c.*

Of all which Articles, the Commons demand Judgment of the Parliament, *&c.*

I have been long upon this, conſidering all the Precedents follow at large. Theſe are the moſt formally ſet down of all the Accuſations hitherto of the Commons, yet moſt of theſe are very general and uncertain: Howbeit the Chancellor took no exceptions to the inſufficiency thereof, but anſwered to every particular.

The next Accuſation of the Commons is 11 *R.* 2. in the 21. of the King, they accuſed divers of thoſe whom the Lords had firſt appealed; whereof, when we ſpeak of all Appeals. *Anno* 21 *R.* 2. the Commons accuſed and impeached of Treaſon the Archbiſhop of *Canterbury*, *Numb.* 15. and demanded Judgment againſt him, and had it. *Numb.* 16.

Eodem Parl. The Commons accuſed and impeached of Treaſon *Tho. Mortymer*, and *John de Cobham*, a Baron of Parlia- Mortymer *and* Cobham.

Parliament, and had Judgment againſt them both.

William de la Pool *Duke of* Suffolk, *impeached.*

Anno 28 *H.* 6. *William de la Pool*, Earl Marſhal, and Duke of *Suffolk*, was accuſed and impeached by the Commons in manner following, *viz.* The Duke being the great Favorite of the King and Queen, the common People laid all the fault of the evil Government on him, and made Ballads thereof, (which I have ſeen) taxing his Loyalty to the King.

The Parliament of 28 *H.* 6. begun the *6th* of *November*, and held to the *6th* of *December*, and was then Prorogued to the 22*th* of *January*.

The Duke of *Suffolk*, whether provoked by the Ballads then made on him, or by ſome Speech in the Houſe of Commons, whereof nothing is recorded, did require of the King that he might be ſpecially accuſed, and be heard to anſwer, for that many reported him to be an untrue man; and he made a ſolemn Proteſtation of his Loyalty, wherein he ſheweth, that his Father, and three of his Brethren, died in the Service of the King, and of his Father and Grandfather. That he himſelf had ſerved 34 years in the Wars, being then but a Knight. That he had been taken Priſoner, and paid

20000

20000 Marks for his Ranſom. That he had been 30 years of the Order of the *Garter*; Chancellor to the King 15 years; and had been 17 years in the King's Wars, without returning home. And he prayed God ſo to pardon him, as he had been true to the King; and required his Purgation. *Numb.* 14, 15.

Whether this was ſent to the Commons, or what notice they had of it, appears not; but on the *26th* of *January*, the Commons required the Duke might be committed to Ward for his own Confeſſion, for that, as I concieve, he himſelf confeſſed, That the general Fame went of him: And the Lords, on Conſultation of the Juſtices, thought the ſame to be no good Cauſe of Commitment, unleſs ſome ſpecial Matters were objected againſt him. *Numb.* 16. *General Fame.*

On the *28th* of *January*, the Speaker declared to the Lords, how the Duke of *Suffolk*, as it was ſaid, had ſold this Realm to the *French*, who prepared to come hither. And that the ſaid Duke, for his own defence, had furniſhed *Wallingford* Caſtle with all Warlike Munition. And then on requeſt, the Duke was committed to the *Tower*.

On

On the *7th* of *February*, the Chancellor, and ſome other Lords, were ſent by the King to the Commons, (a thing not uſual) but wherefore they were ſent is not expreſſed, happily to be informed what they could ſay againſt the Duke, or to reconcile the buſineſs. But the Commons delivered to this Chancellor, and thoſe other Lords, a Bill of Articles againſt the Duke, wherein they accuſed him of divers Treaſons, *viz.* For intending to marry his Son to the Heir of the Duke of *Somerſet*, and thereby for want of Iſſue of the King, to claim the Crown. For practiſing with the *French*, &c. *Numb.* 18, 19. and they require Proſecution againſt him. *Numb.* 17.

March 19. The Commons delivered another Bill of leſs Offences againſt him, *Numb.* 28, 29, 30, *&c.* requiring thoſe Articles alſo to be inrolled, and the Duke put to his anſwer.

Theſe before recited are all the ancient Precedents I find recorded; the following are of later times.

Anno 1 *Jac.* The Commons accuſed and impeached by word of Mouth Sir *Giles Mompeſſon*, and Sir *Fr. Michell*, Knights; for many Oppreſſions done to the People: They impeached them to the Lords

Lords at a Conference, and afterwards delivered their Declaration againſt them.

Firſt, *Concerning a Patent for Inns and Oſteries.*

Secondly, *A Monopoly for Gold and Silver Thread.*

Thirdly, *Concerning a Patent of Concealments.*

Eodem Parl. They accuſed *Francis* Lord Viſcount St. *Alban* (at a Conference) of Bribery, and Corruption, in his Office of Chancellor. They delivered no Writing, but a Committee of the Lords having conſidered the Proofs, and drawn up the Particulars in form of a Charge, they were ſent to the Lord Chancellor, and his anſwer required to each particular.

Lord Viſc. St. Alban, Chancellor, accuſed, who was Sir Francis Bacon.

In the ſame manner in the ſame Parliament, they accuſed *John Bennet*, Judge of the *Prerogative Court*, of Bribery and Corruption in his Office.

In the ſame manner they accuſed and impeached *Lyonel* Earl of *Middleſex*, and Lord Treaſurer of *England*, of Bribery and Extortion, and Impoſitions on *French* Wines and Grocery, which being reported to the Houſe, a Committee was appointed to conſider of the Commons com-

complaint, and alſo of a Committee, who had reported to the Houſe a great want of Powder in the Stores, through the Lord Treaſurer's negligence.

A Committee appointed to conſider thereof, did, after many Examinations taken, draw up out of the whole Complaint of the Commons, a Charge againſt him; as alſo out of the Report of the Committee for Munition touching the want of Powder; and of a Complaint made to the Houſe by Sir *Thomas Dalliſon*, and of ſome Miſdemeanors whereof they are informed in the great Wardrobe, and Court of Wards: Which Charge the Houſe ſent unto the Treaſurer, and required his Anſwer. 21 *Jac.*

In eodem Parl. 21 *Jac.* The Commons at a Conference, accuſed and impeached by word of Mouth the Biſhop of *Norwich* of ſome Miſdemeanors, which being reported to the Houſe, the ſaid Biſhop made a preſent Anſwer thereunto, as it was.

In the Parliament 1 *Car.* 1. *Febr.* 6. The Commons at a Conference accuſed and impeached *George* Duke of *Buckingham*, of many Miſdemeanors, and delivered their Declaration in Writing, that the ſaid Duke might be put to his Anſwer.

§ 2. *The ſecond manner of Accuſation is* Ex parte Domini Regis, *which is threefold.* *Accuſation* Ex parte Domini Regis.

The two firſt are immediately from the King, and the third from the Commandment of the Lords, by a formal Information exhibited in Parliament by the King's Attorney, or Council learned, as was that of *E.* 3. againſt *Roger Mortimer* Earl of *March*, and divers others; and 4 *R.* 2. againſt Sir *Ralph Ferrers*, K^t; and 1 *Car.* 1. againſt the Earl of *Briſtol.*

By the King's Commandment, either upon the Petition of the Delinquent, and upon the return and view of any the Proceedings taken elſewhere, as againſt the Earl of *Northumberland*, and Lord *Bardolph*, upon former Proceedings againſt them in the Court of *Chancery.* And 2 *H.* 6. upon requeſt of the Commons againſt Sir *John Mortimer*, Knight, indicted in *London.* In theſe Caſes no Articles are exhibited *Ex parte Domini Regis*, as in the former.

By Articles exhibited *Ex parte Domini Regis*, *Ex parte Dominorum* againſt ſuch as the Complaint is made upon in general by the Commons, *prout* 1 *R.* 2. againſt

Gomeniz, *Weſton*, and *Alice Peirce*; 7 *R.* 2. againſt the Biſhop of *Norwich*, and divers others. Which Articles, though drawn and exhibited *Per mandatum Dominorum*, yet were the Parties charged therewith *Ex parte Domini Regis*.

Of Accuſation by Information Ex parte Domini Regis.

Of Accuſation by Information Ex parte Domini Regis.

In *Rot. clauſ.* 4 *E.* 3. There is a Proclamation of the death of *Edmond* Earl of *Kent*, where it is ſaid, certain Letters of his containing Treaſon, were ſhewed to the King; wherefore he was Arreſted, and freely acknowledged the ſame before the Earls, Barons, and other Grandees and Nobles of the Realm, in the Parliament at *Wincheſter*, 4 *E.* 3.

Here appears plainly, that Articles of Treaſon are exhibited in Parliament againſt the Earl of *Kent*.

In the next Parliament in the ſame year, *Edmond*, Son and Heir of the ſaid *Edmond*, exhibited his Petition, praying the King, that the Record and Proceſs whereupon the ſaid Earl was put to death, might be brought before him in Parliament, and if Errors be found, that Right be done. *Numb.* 11. The which being

being read before the King, Prelates, Earls, Barons, and other Grandees in the ſaid Parliament, the King by his Royal Power and Dignity by aſſent in Parlialiament, repealed the ſaid Judgment. *Numb.* 12.

Note, That in this Repeal no Error was alledged, nor any Exceptions taken for this, that the Lords proceeded upon the Articles only, which were objected againſt him the ſaid Earl.

This is out of the Cloſe Roll.

The firſt Precedents recorded in our Parliament Rolls of Accuſations in this kind, are theſe of 4 *E.* 3. in the Parliament at *Weſtminſter*, which are added at large amongſt divers others, at the end of this Diſcourſe, the effect whereof doth follow, *viz.* Theſe are the Treaſons, Felonies, and ill Deeds done to our Lord the King, and to his People, by *Roger de Mortimer*, and others of his Covin, reciting them all, and concludeth thus: Whereas our Lord the King doth charge you the Earls, Barons, and other Peers of this Realm, that for as much as theſe things touch him principally, and you, and all the People of this Realm, That

you do unto the ſaid *Roger* right and lawful Judgment, as is fit for ſuch an one to have who is very guilty of all the crimes above written, for that he believed the ſaid things are notorious, and known for truth unto you, and to all the People of the Realm, *Numb.* 1.

Then followeth the Judgment againſt him.

Item, In the ſaid manner our Lord the King charged the ſaid Earls, Barons, and Peeres, to give right and lawful Judgment on *Simon de Bereford* Knight, who was ayding and counſelling unto the ſaid *Roger de Mortimer* in all treaſons and ill deeds, for which the ſaid *Roger* was ſo awarded, and done to death, as the thing that is known, and notorious to the ſaid Peers, as the King believeth.

Then followeth the Judgment againſt him alſo.

Then followeth the Judgment againſt *John Matrevers*, *Thomas de Gurney*, and *William de Ogle*, Numb. 5. But no particular accuſations are recorded againſt any of them, unleſs they were compriſed in thoſe general words of that againſt *Mortimer*,

Mortimer, viz. And other of his Coyn. For ſome of the ſame Crimes are mentioned in the Judgments, yet no doubt but the Kings Attourny did exhibit Articles againſt every of them, upon which the Lords proceeded to Judgment. Here I do ingenuouſly confeſs my own Error, when I ſaid that this Judgment againſt *Roger de Mortimer* was afterwards reverſed; for that he was put to death without any Accuſation, which I conceived to be ſo upon firſt view of the Repeal thereof.

Anno 21. *E.* 3. *Numb.* 10. Where the Petitioners *Roger de Mortimer*, the Grandchild aſſigneth for that the ſaid Earl was put to death, and he diſinhereted: *Sans Accuſament*, *Et ſans eſtre maſone in Judgment ou en Reſpons.*

By which words *(ſans accuſament)* I gave you to underſtand that the Articles were no accuſation, whereas now upon better Conſideration I do find that theſe words do intend no accuſation by witneſſes or otherwiſe to prove the ſaid Articles objected againſt him. For theſe Articles are a legal accuſation in Parliament, and frequently uſed, as appears by many Precedents of the like nature. But there was no other proof offered

by the Lords to prove the ſame, then that the King believeth them, and that they are notorious and known for truth unto the Lords, and all the People of the Realm.

And the Lords alſo having examined theſe Articles, ſaid all theſe things contained therein are notorious and known. They ſpeak not a word of any one witneſs examined, or any other proof then the common fame: For this Cauſe and for that the ſaid Earl was not brought to Judgment nor to anſwer, but condemned unſeen and unheard upon common Fame only without any legal Proof, The whole Parliament did very juſtly Repeal the ſaid Judgment and Record, declaring it to be erronious and defective in all points. And the Lords were willing to damn the whole Record in all points, leaſt haply it might be alledged againſt themſelves another time for Precedent.

The Judgment, defective in all points.

Anno 15. *E.* 2. The Lords and Commons joyned in the Accuſations againſt the *Spencers*, and for that the Lords had no Record in their own purſuit upon the Cauſe contained in their award, and they ought not to be their own Judges, *&c.* having been Accuſors no exceptions were taken

taken to the Articles but other Errors aſſigned, *quod vide* where it is ſaid to be *ſans Accuſament*, ſo that they repealed it not for that there was no Accuſation but for that he was not brought to his Anſwer.

Again, That thoſe words *Sans accuſament* ſhould ſimply ſignify no Accuſation, is only the Averment of the Petition. The Judgment doth not ſay, that there was no accuſation, but that it was erronious in all points. And ſo it was, no proof being produced but common Fame to prove the Anſwer. And this firſt error bred a ſecond. I do not well underſtand the meaning of theſe words (*Sans accuſament.*) That a Peer ought to be Indicted for Capital offences in Parliament. But having peruſed all the Judgments I do not find any one Peer indicted in Parliament. In 11. *R.* 2. *Numb.* 7. All the Lords Spiritual and Temporal claimed as their liberty and franchiſe, that the great matters moved in this Parliament, and to be moved in other Parliaments in time to come touching the Peers of the Land, ought to be admeaſured adjudged and diſcuſſed by the courſe of the Parliament, and not by the Civil-Law, nor by the Law

of the Land, uſed in the more baſe Courts of the Realm, which the King granted in full Parliament, *eodem Anno Rot. Appeal* 290.

This is ſaid to be their ancient cuſtom, *viz.* To be adjudged according to the uſe of the Parliament only.

Then no Peer can be indicted in Parliament, for that it is contrary to the uſe of Parliament. Let this ſuffice for the confeſſion and rectifying mine own former Error herein.

But a Lord of Parliament may be indicted out of Parliament, and by the Kings command proceeded againſt in the next Parliament, upon the ſame indictment as in theſe Subſequent.

The Lord Berkley *arraigned waved his Peerage.*

In the ſame Parliament, the Lord *Berkley* was arraigned, for the death of *Ed.* 2. and whether out of his humility or otherwiſe, he waved his Peerage, and put himſelf on the Tryal of his Country. The Articles againſt him though not expreſſed, but by the Inference out of his Arraignment are for the murder of King *Ed.*2. at *Berkley* Caſtle in the County of *Glouceſter*, unto which he anſwered, that he was then ſick at *Bradley* in *Worceſterſhire*, and pleaded not guilty of the death of the ſaid King, *Et de hoc*

de

de bono & malo ponit ſe ſuper Patriam: The Precedent ſhall hereafter be added at large.

It begins thus.

Placita Coronæ tenta coram Dom. Rege, Ed. 3. *poſt conqueſtum Angliæ in pleno Parliamento ſuo predicto. Et allocutus de hoc quod cum Dominus,* Edwardus *nuper Rex Angliæ Pater Dom. Regis nunc, in cuſtodiam* Thomæ *& cujuſdam* Johannis Matrevers *extitit deliberatus, ad ſalvo cuſtodiendum Caſtro ipſius* Thomæ de Berkley *in Com.* Glouceſter, *& in eodem Caſtro in cuſtodia ipſorum murderatus extitit, & interfectus, qualiter ſe velit de morte ipſius Regis acquietare: dicit,* &c. *Numb.* 16.

Then follows his Anſwer.

Here the cauſe why the Lord *Berkley* was tryed is mentioned, but the Articles objected againſt him, and by whom he was accuſed, who queſtioned him, whether the Chancellor or Steward of *England*, or who elſe; All theſe circumſtances are omitted. It appears not I ſay in what manner this crime of the Lord *Berkley* was preſented to the Lords, whether

ther by the former general Information againſt *Mortimer*, *& autres de la Covyn*, or by ſome ſuch Particular Information againſt him alone, which I rather believe.

Some ſuch Information there muſt be of neceſſity, elſe how could he be queſtion'd for his crime in Parliament? But here it appeareth that the Lords brought him to his Anſwer, which they omitted to *Mortimer*, and in that Point their Proceedings againſt *Mortimer* were erronious. And had his manner of Accuſation been erronious alſo, No doubt but the Lords would have avoyded that error now againſt *Berkley*.

The manner how *Berkley* was arraigned here, *in pleno Parliamento*, is explained in the Precedent of, 1 *R.* 2. *Gomeniz* and *Weſton*, who were brought Priſoners by the Conſtable of the *Tower*, before the Lords in full Parliament ſitting in the white Chamber, where they were arraigned at the commandment of the ſaid Lords in full Parliament, by Sir *Richard le Scroop* Knight, Steward of the Kings Houſe. The words *full Parliament* ſignify the Lords and Commons. For that Record ſaith, the Commons prayed that all

all ſuch that have ſurrendred any Forts, *&c.* might be put to their Anſwer before the Lords and Commons, *&c.* Whereupon they were brought to their Anſwers in full Parliament for that Offence. So here I conceive the Lord *Berkley* being accuſed by the King, for the murder of King *E.* 2, was brought before the Lords and Commons: For the Commons are to be preſent at ſuch arraignment as ſhall be ſhewn hereafter, and the Clerk of the Crown having read the Accuſation againſt him, *Allocutus fuit:* That is the Lord Steward of *England* recited the Fact, whereof he was accuſed and demanded of him how he could acquit himſelf.

This I conceive to be the manner thereof, *Vide* the Appeals 21 *R.* 2, for the form thereof.

I marvel the Lords permitted the Lord *Berkley* to waye his Peerage, and put himſelf *ſuper Patriam.*

Anno 4 *R.* 2. Sir *Ra. Ferrers* Knight, was brought into Parliament under the guard of the Marſhal of *England*, and there arraigned on the Kings behalf, for ſuſpition of Treaſon, *&c. Numb.* 21. In the Proceſs againſt him is recorded that

that for ſuſpition of Treaſon ſurmiſed againſt him, he was arreſted in the Marches of *Scotland*, by *Monſieur de Lancaſter*, and other Lords Temporal there being in the ſaid Marches, and that he was brought under the ſaid Arreſt by commandment of the Lords to Anſwer in this Parliament, to that which ſhall be ſurmiſed againſt him, in ſpecial concerning certain Letters, which were found and ſent to the King and his Councel. The Letters were alſo recorded, and read in Parliament, *Numb.* 17. 18, 19, 20. but the Information exhibited againſt him, whereupon he was arraigned is not recorded. It is only ſaid, He was arraigned, *Ex parte Domini Regis.*

Queſt. *Q.* 3. *Here might be two Queſtions.*

1. Firſt, Whether was this Sir *Ra. Ferrers* legally brought to his Anſwer in Parliament by the commandment of the Duke of *Lancaſter*, and thoſe other Lords who were then with him in the Marches of *Scotland.*

2. Secondly, Whether he being no Baron or Lord of Parliament (for he never had Summons) might be legally arraigned

arraigned in Parliament for life and death, upon an Information, *Ex parte Dom. Regis*, which is contrary to the Law, as was reſolved in Parliament, 4 *E.* 3. *Numb.* 2. and 6.

For reſolutions of theſe doubts, I am of opinion that the Duke of *Lancaſter* might ſend Sir *Ra. Ferrers* to the Parliament, becauſe it was then ſitting, and might examine the Treaſon whereof he was ſuſpected, though they could not proceed to Judgment againſt him, without the Commons, he being a Commoner, and not their Peer: And it fell out in the Examination of this buſineſs, they found the Letters to be counterfeited, and ſo he was acquitted thereof: And ſo far their proceeding was not illegal. For the Parliament may entertain and examine any Cauſe, and then direct the Judgment thereof to its own proper Court if it belong not unto them as, they did in, 5 *R.* 2. *Numb.* 43. & 44. *Reſolv.*

Here Sir *William Cogan* Knight, being accuſed by Sir *Richard Clurdon* of matter ſounding to Treaſon. After the Lords had heard the Cauſe, they remitted both the parties to the Common-Law. And in this Caſe of Sir *Ra. Ferrers* (if they had found he had been guilty) they might *Obſerv.*

might have proceeded to Judgment againſt him according to the Precedent of Sir *Tho. Mortimer* in 2 *H.* 4. who was indicted in *London*, and the Indictment returned into the Chancery, and thence brought into the *Parliament*, where the Commons affirmed the ſame, and prayed Judgment againſt him.

Anno 2 *H.* 4. The Lords Temporal gave Judgment on one *Tho. Holland* Earl of *Kent*, *John Holland* late Earl of *Huntington*, *John Mountague* late Earl of *Salisbury*, the late Lord *de Spencer*, and *Ralph Lumley* who were beheaded in a War they had Trayterouſly raiſed againſt the King. This Judgment is entred but not the Information, *Ex parte Dom. Regis*, which is neceſſary to be underſtood, for had it been omitted, his Son *Thomas* would without doubt have aſſigned that for one of the errors in his Petition to reverſe the ſaid Judgment, 2 *H.* 5. *apud Leiceſter*, which he did not, though he aſſigned for an Error, That his Father was put to death without an accuſation.

The Earl of Briſtol charged with Treaſon.

In the *Parliament* begun at *Weſtminſter Feb.* 6. 1 *Car.* 1. and continued until *June* 25. *Anno* 2. *ejuſdem Regis*, *John* Earl of *Briſtol* was charged with High Treaſon

Treaſon in this manner, *viz. Primo die Maii.* The ſaid Earl of *Briſtol* being brought to the Bar, and kneeling till the Lord Keeper wiſhed him to ſtand up; The Lord Keeper told him, he was ſent for to hear his Charge of High Treaſon, And Mr. Attorney General being at the Clerks Table, began to open his Charge, but being interrupted by the ſaid Earl, who with much importunity exhibited Articles againſt the Duke of *Buckingham* then preſent, which as he ſaid he conceived to be Treaſon, and required of the Lords that his Teſtimony againſt the Duke, and the Lord *Conway*, againſt whom he then alſo delivered Articles, might not be made invalid no more then the Charge againſt himſelf, which he affirmes was procured by the ſaid Duke: yet notwithſtanding the heads of the Kings Charge were opened againſt him by Mr. Attorney, and then the ſaid Articles againſt the ſaid Duke, and againſt the Lord *Conway* were read. And it was ordered by the Lords of the *Parliament* that the Kings Charge againſt the ſaid Earl, ſhould be firſt heard, and afterwards the Earls Charge againſt the Duke, *&c.* But yet ſo, as the Earls Teſtimony againſt the ſaid Duke be not

Articles againſt the Duke of Buckingham.

not prevented, prejudiced, hindred or impeached.

Secundo die Maii. The Houſe was moved that the Earl of *Buckingham*, might be indicted according to the, *Stat.* of 35 *H.* 8. the Treaſons committed being beyond the Seas as was objected, and that being certified to both Houſes, they to proceed againſt him by Tryal of *Peers*. But their Lordſhips did not reſolve on the manner of proceeding. Then the Houſes were moved that Mr. Attorney might provide an Indictment, againſt the ſaid Earl to be returned to the Houſe on *Saturday* next, *Maii* 6. And if he doubt of the Form, to confer thereof with the Judges. And if any great difficulty, appear to reſort to their Lordſhips and acquaint them with it. And it was ordered that Mr. Attorney proceed with the preparation, but the Houſes not to be concluded at their next meeting on Thurſday. And the Sub-Committee for Priviledges, *&c.* to ſearch for Precedents in the mean time. *Die Jovis Maii* 4. The Sub-Committee for Priviledges reported one onely Preſident, *viz.* the Tryal of the Earl of *Northumberland*, 5 *H.* 4. which the Clark read unto them out of the *Parliament* Roll of that year. Where-

Whereupon after long debate, It was ordered firſt that Mr. Attorney prepare the heads of the Charge, againſt the Earl of *Briſtol*, and to bring them in on *Saturday* next.

Secondly, The Earl then to receive his Charge at the Bar.

Thirdly, That when the Earl hath heard his Charge, the Lords will determine when he ſhall Anſwer, But he is not to be inhibited if he will Anſwer preſently.

Fourthly, The Cauſe of the Earl of *Briſtol* is to be retained wholly in this Houſe.

After the Earls Charge is brought in and his Anſwer, then their Lordſhips to proceed to hear Mr. Attornies proofs amongſt themſelves, and then to put the Cauſe into a way of Proceeding in this Houſe.

Die Sabati Maii 6. The Lord Keeper ſhewed how Mr. Atturney deſired that in regard the Houſe, hath already heard the nature of the crimes objected againſt the ſaid Earl of *Briſtol.*

That the Clark of the Crown in the Kings Bench, may attend the reading of the Charge here according to a Precedent of former times, which was

denyed in regard the Clark of the Crown in the Kings bench, is no Miniſter of this Court, And alſo for that it was ordered *May* 4. that this Cauſe was wholly to be retained within this Houſe. The ſaid Order being read, the Earl was brought to the Bar, and the Lord Keeper commanded Mr. Attorney to read the Charge againſt him, who read the ſame out of a Parchment ingroſſed in Court-hand, and ſigned by himſelf, *Ro. Heath.*

It containeth diverſe Articles of High Treaſon, and other great Enormities, Crimes, Offences, and contempts committed by the ſaid Earl, *&c. prout poſtea.* Thus much touching the Charge againſt the ſaid Earl by Information in the Kings behalf.

Queſt. A Queſtion was demanded of me and others in private, the laſt Parliament: Thar ſeeing by Order of the Lords Houſe *May* 4. the Earl of *Briſtols* cauſe ſhould be wholly retained in this Houſe, how that might now be done in reſpect of the *Stat.* of 35 *H.* 8. By which it was enacted, That all Treaſons committed beyond the Seas, as this Earls were, ſhall be tryed in the Kings Bench, or before Commiſſioners Aſſigned by the King; And an Order of the upper Houſe cannot

not avoid the *Statute*. Some were of opinion, that the Earl was firſt to be indicted before Commiſſioners, appointed by the King, and that Indictment being returned into the Parliament to be tryed thereon by his Peers, and vouched that Precedent of 2 *H.* 6. Of Sir *John Mortimers* Indictment returned into the Parliament.

But then the Cauſe cannot be wholly retained in the Parliament, neither can it be inferred out of the Precedent of Sir *John Mortimer*, that the Parliament can try any of Treaſon unleſs he be Indicted elſewhere. For then the Parliament ſhould not have ſo much power, as hath the Kings Bench and other inferiour Courts, wherein Capital Offences may be both enquired of and determined. Neither can Sir *John Mortimers* Indictment thus returned be a leading Caſe, for Tryal of Peers in Parliament for he was but a Commoner, and therefore not to have been judged by the Lords, unleſs they had firſt accuſed him, and the Commons did ſo by Informing the Indictment to be true, before the Lords gave Judgment upon him. But their can be no Precedent ſhewn, that a Peer of Parliament hath

been tryed in Parliament on an Indictment taken elſewhere.

To reſolve this Queſtion two things are Conſiderable.

Reſolve. 1. Firſt, The *Statute* of 35 *H.* 8. Whether the meaning thereof were to limit the Tryal of a Peer in the time of the Parliament (for Forreign Treaſons aſſigned) taken in the Kings Bench, or before Commiſſioners Aſſigned by the King, and not elſewhere. But I conceive the *Statute* hath no ſuch meaning. The Preamble ſaith, it was doubted whether ſuch Treaſons might by the Common-Law of the Land be enquired into, heard, and determined within this Realm of *England.* For a plain remedy Order, and Declaration herein to be had and made, Be it enacted, *&c.* So that if ſuch Treaſons have not been heretofore enquirable by the Common-Law, then this *Statute* provides a Remedy and Order for the ſame hereafter. But this *Statute* doth not abridg the Parliament of the power it had to enquire of, and determine ſuch Treaſons in time of Parliament. Whereof there are diverſe Precedents, *viz.* 1 *R.* 2. *Weſton* and *Gomeniz*, 50 *E.* 3. for *William Latimer*, and *John Nevil*, 7 *R.* 2. for the Biſhop of

of *Norwich*, & *ibid. Numb.* 17. for *Creſſingham* and *Shipworth*, & *ibid. Numb.* 24. for Sir *William Elſingham*, Sir *Thomas Trevet*, and Sir *Henry de Ferrers*, all Tryed in Parliament for matters done beyond the Seas.

The ſecond thing to be conſidered is, The Order it ſelf which I conceive to be of force notwithſtanding the *Statute*, of 35 *H.* 8. for that it is neither directly contrary to the *Statute*, nor repugnant to the Common-Law, otherwiſe the Act of one Houſe alone cannot alter a former *Statute* made by conſent of both Houſes. And this is to be remembred, that the Proceeding againſt a Peer in Parliament is not neceſſary. *Obſerv.*

But thus it was uſed to be, viz.

The Peer accuſed to be brought before the Lords and Commons, and then the Lord Steward to ſit in the Chancellors place, on the *Woolſack* and the Articles to be read againſt him by the Clark of the Crown, and upon his Anſwer the Lords do determine of their Judgment, which is afterwards pronounced by the ſame Lord Steward.

A Queſtion might be whether the Commons have uſed to ſit with their Speaker at theſe Tryals. If they have then the Court of Requeſts, or ſome ſuch place may be provided for the purpoſe. And thus that whole Cauſe might be retained in Parliament notwithſtanding the *Stat.* of 35 *H.* 8. Thus much touching the Accuſation, *ex parte Dom. Regis*, exhibited in a formal Accuſation by the Kings Atturney.

The Duke of *Clarence* was arraigned in Parliament, 18 *E.* 4. upon the like Information, but the Precedent is not in the Parliament Rolls: Therefore I omit it.

℣. 4. *The ſecond kind of Accuſation on the Kings behalf is*, ex mandato Dom. Regis, *upon the Roll and view of any proceedings elſewhere againſt the Delinquent, or upon his Petition; The Precedents thereof are theſe.*

Anno 5 *H.* 4. The Earl of *Northumberland* was Tryed in Parliament, *ex mandato Dom. Regis*, upon his own Petition. The Accuſation and manner was thus. The ſaid Earl had raiſed Forces to have joyned with his Son *Hotſpur*, in

in Rebellion againſt the King: *Hotſpur* was ſlain in the Battel of *Shrewsbury*, 21 *July* 4. *H.* 4. before the ſaid Earl could joyn with him. Whereupon he diſmiſſed his Forces, and retired to *Worksworth* Caſtle. The King after the Battel came to *York*, and ſent for the ſaid Earl, and being come pardoned him for his life but abridged him of his Liberty. The next Parliament was ſummoned the 20 of *October* to begin at *Coventry* the 3. of *December*. And the Earl had his writ of Summons. This Parliament was prorogued till the 23. of *November* by new Writs (as the manner then was) returnable *Craſtino Hillarii* then following. But the Earl had no new Summons thither.

But thither he comes a Petitioner.

Speed ſaith he was abridg'd of his liberty, but the Record ſaith, he came before the King and Lords. And not that he was a Priſoner as *Gomeniz*, and *Weſton*, 1 *R.* 2. Nor that he was cauſed to be brought as a Delinquent, ſent for as *Alice Peirce*, 1 *R.* 2. But that he came before the King, Lords, and Commons of Parliament. And then the Chancellor

told him that upon *Wedneſday* laſt paſt, he had been before the King and Lords, and Commons in the ſame Parliament; and beſought the King as he had done before, at his coming before him at *York*. That the King would do him grace for his miſpriſions againſt him, in not keeping his Laws and Statutes, as by one Petition delivered by him in Parliament written in *Engliſh*, *The tenor whereof followeth.*

To my moſt dreadful and Soveraign Leige Lord.

A Petition. *I your humble Subject beſeech your Highneſs, to have in remembrance my coming into your Gracious Preſence at* York, *of your free will by your goodly Letters.*

The which Petition *per Commandment du Roy*, was examined by the Juſtices to have their Counſel and Advice therein.

But the Lords by Proteſtation made claimed the Judgment, to belong unto them only in ſuch Caſes, *&c.*

And ſo the Lords Tryed him, and acquited him of Treaſon and Felony, but found him guilty of a Treſpaſs only which

which the King pardoned. Here no Information was exhibited againſt the ſaid Earl, yet the Kings Counſel opened his Offences to the Lords, elſe how could they appear.

Anno 7 *H.* 4. The King commanded the Lords Temporal in Parliament, to adviſe what manner of Proceſs ſhould be made againſt *Henry* late Earl of *Northumberland*, and *Tho. Bardolph* late Lord Baron, for certain ill deeds which they had lately committed contrary to their Allegiance. At their meeting the Conſtable of *England*, ſhewed them the Proceſs made in the Court of *Chivalry*, againſt *Henry de Peircy* upon the Articles of Treaſon committed by him and others of his Covyn.

In which Articles are named the Arch-Biſhop of *York*: *Tho. Newberry* Earl Marſhal, the ſaid Earl of *Northumberland*, the ſaid Lord *Bardolph* and many others, and their ſeveral Treaſons are therein contained. The Lords having adviſed therein, and conſidered the proofs delivered their opinion to the King touching the ſaid Earl of *Northumberland*, and the ſaid Lord *Bardolph* only, and proceeded to Judgment againſt them. Then the King cauſed to be demanded

demanded of the Lords Temporal, Peers of the Realm what they would ſay touching the Act of the ſaid late Arch-Biſhop of *York*, and of the ſaid Earl Marſhal, who lately with a great multitude of people were armed, and trained in the field within the Realm of *England* with Banners diſplayed, *&c.*

Unto which demand the ſaid Lords Temporal ſaid, That according to the Information to them given by the ſaid Conſtable. It ſeemeth unto them to be Treaſon: yet notwithſtanding the Lords deſired that with good deliberation, when they next returned to the Parliament they might ſpeak thereof, unto our Lord the King as no error might be found in their doings in time to come. This was done on that day the Parliament was adjorned. Here the Lords had no other Accuſation againſt thoſe two Peers but the Kings commandment, upon view of former Proceſs againſt them in the Court of *Chivalry*.

And the Lords declared their opinion touching the Archbiſhop of *York*, and the Earl Marſhal (though their Treaſons were contained in the ſame Proceſs alſo) leaſt Error might be found in their doings hereafter. But whether they thought

thought their Error to be, that the King had not commanded them firſt to adviſe thereon, touching the ſaid Archbiſhop, and the Earl Marſhal as he had done touching the others. Let the Reader Judge; For my part I think that would have been error: Could the Lords proceed upon Proceſs elſewhere unleſs the King commands them?

2 *H.* 6. The Judgment againſt *John Mortimer*, is drawn up very briefly by *John Hales* one of the Juſtices of the Kings Bench, wherein he firſt ſhews that the ſaid Sir *John Mortimer* was Indicted in *London* ſitting the Parliament before the Lord Mayor of *London*, and other Commiſſioners appointed by the King. For that the ſaid Sir *John* being committed to the Tower, for ſuſpition of Treaſon, corrupted his keeper and broke Priſon: That the ſaid Indictment was returned into Chancery, *Ex mandato Dom. Regis*, and by the Chancery brought into the Parliament before the Duke of *Glouceſter* the Kings Protector, and the Lords Temporal, the King being then an Infant.

And the Protector being Authorized by Commiſſion to hold the Parliament,

de

de Precepto Dom. Regis. That the ſaid Sir *John Mortymer* by Vertue of the Writs was brought before the ſaid Duke, and Lords, and Commons. That the ſaid Commons affirmed the ſaid Indictment to be true, and deſired Judgment againſt him, as convict of Treaſon and Felony.

And laſtly, That he was thereupon adjudged. In this is ſet down all the eſſential parts of the Lords proceedings againſt *Mortymer*. The Ceremonious or formal parts thereof are omitted, as, who complained of or accuſed *Mortymer* to the *Parliament*.

The King or the Commons did not, for then there needed no Indictment: And therefore it muſt move for the King either before the Indictment, or rather upon the Return thereof unto the Houſe. For had the Accuſation been before the Indictment, it had been a ſhorter way to Arraign him alſo before the Commiſſioners in *London*, (he being no Member nor Peer of *Parliament*) then to return the Indictment into the *Chancery*, and then be brought into the *Parliament*.

Here

Here is alſo omitted the Conference before hand, between the Lords and Commons touching this matter: For it is very unlikely that the Lords did ſuddainly ſend for the Commons, and then abruptly read the Information before them, and they as ſuddainly affirm the ſame, all theſe are neceſſarily underſtood. That the Commons affirmed the Indictment, *&c.*

It appears that the Lords cannot of themſelves Judge a Common Perſon, for an Offence for he is no Peer according to that of, 4 *E.* 3. *Numb.* 26.

The manner of Accuſation by Information, *Ex parte Dom. Regis,* is when the Commons as any other private Perſon accuſe any man unto the Lords in general, but do not declare the Offences in particular, other then by the Commandment of the King. Articles are drawn up againſt the Delinquent, *Ex parte Dom. Regis.*

The Precedents are theſe.

2 *R.* 2. The Conſtable of the *Tower,* was commanded to bring *Gomeniz* and *Weſton,* (whoſe Offences were complained of in general by the Commons that

that they named) before the Lords in Parliament, to Anſwer to the Articles objected againſt them on the behalf of the King, and they were ſeverally arrained at the Commandment of the Lords, *&c.*

Eodem anno, *Alice Pierce* being complained of by the Commons was accuſed, and commanded to come before the Lords in Parliament, to Anſwer to certain things objected againſt her on the Kings behalf.

And here upon Sir *Richard le Scroope*, Chief Steward of the Kings Houſe by Comandment of the Lords, reherſed in Parliment in the preſence of the ſaid *Alice*, a certain Ordinance, *&c.* Made in the Parliament of 50 *E.* 3. againſt her.

And this Reherſal being made, the ſaid Steward ſurmiſed unto the ſaid *Alice*. That it ſeemed to the Lords of the Parliament that ſhe had incurred the pain compriſed in the ſaid Ordinance in certain points, and eſpecially in two, That is to ſay, *&c.*

By theſe two Precedents it appears plain enough that the Lords commanded the Articles to be drawn, and exhibited though *ex parte Dom. Regis*, for all theſe are

are ſaid to be done by their Commandment, And the practiſe at this day is, that out of the Complaints of the Commons, as of *Mompeſſon*, The Lord Chancellor, and the Lord Treſurer, and a Committee of the Lords did draw up the Charges. But they wanted the words *Ex parte Dom. Regis.*

The reaſon why in this Cauſe the Articles are, Ex parte Dom. Regis, *ſeemed to be this:*

The Commons complain but impeach not, Notwithſtanding the Impeachment the Lords cannot proceed neither can they Impeach any to themſelves: So it reſts that the party is to be Impeached at the Kings Suit.

The Lords cannot impeach any to themſelves.

It may be lawful for me to examine the proceedings of the Lords in the Complaint againſt *Mompeſſon*, and to compare them with ancient Proceedings in like Caſes, And they will appear to differ much.

And touching *Mompeſſon* the Commons did not only complain but accuſe him: He fled, in his abſence they ought to have proceeded to Judgment againſt him, before Proclamation firſt made for him

him to appear before the King, and then at a day, the ancient uſe in ſuch Caſes was this.

The Lords conſidered of the Complaint, and examined the Proofs produced by the Commons: Then agreed on their Judgment and cauſed Proclamation to be made throughout *England* for the party to appear at a day, elſe Judgment ſhall be pronounced againſt him, with which the Commons are to be acqnainted before the Proclamations are ſent for. Then the Return of the Proclamations to be reviewed and examined, and if any Errors be therein, new Proclamations are to be made in the next Shire only for the party to appear at a ſhort day: If they find no Errors in the Return, then Judgment is to be pronounced and not before. Thus it was in 21 *R.* 2. in *Thomas Mortymors* Caſe, *&c.* In 7 *H.* 4. in the Earl of *Northumberlands* Caſe. But there needed no Articles to be drawn up, *Ex parte Dom. Regis*, out of the Impeachment of the Commons for the Suit is theirs and not the Kings.

Touching the Lord Treaſurer, Firſt the Commons did ſwerve from the Ancient Courſe in this, they delivered not their

their Accuſation in writing (he being abſent;) Had it been in the open Houſe, an Impeachment by word of mouth had been ſufficient, and the Suit had been theirs: but it being at a Committee, how could the Lord Treaſurer take notice of their Impeachment? wherefore the Lords of neceſſity did draw up a Charge againſt him out of their Accuſation, and then it became the Kings Suit, and they were abridged of their power to reply, or demand Judgment, *Prout in* Weſton & Gomeniz, *Caſe* 1. *R.* 2.

And *Alice Peirce*, *ibid.* Neither was it now neceſſary for the Commons to be acquainted with the Delinquent's Anſwer, or any of the Proceedings, for that they neither demanded he might be put to his Anſwer before the Lords and them, nor impeached by word in open Houſe, nor in Writing, One of which is required in an Impeachment.

And the Lords they varied in this, that they did mingle other Complaints with theſe of the Commons, when each ſhould have been apart of it ſelf, *prout* 43 *E.* 3. Sir *Joh. at Lees* Caſe. Neither did the Lords anciently uſe to omit any part of the Commons Complaint and

Accuſation, as they did the Impoſition on the *French-Wines*: And the Articles of the Charge they ſent to the *Lord Treaſurer* ought to have been examined *ex parte Domini Regis prout* in the former Precedents of 1 *R.* 2. The next Precedent is 7 *R.* 2. upon the Demand of the Commons againſt the Biſhop of *Norwich* and others.

§. 5. *Of Accuſation by Complaint of private Perſons.*

I do not remember any Precedent of this manner of Accuſation for publick Offences unleſs the Parties Complainant be particularly intereſſed therein; yet I doubt not but ſuch Complaints have been, and may be received, and the Parties proceeded againſt in Parliament, or elſe that High Court ſhould not have ſo much Authority to receive Information *pro Domino Rege* from private perſons, as the Inferiour Courts have: But what hath been done ſhall appear; I will omit all Complaints of particular wrongs, evcept it be of *Bribery*, *Extortion* or *Oppreſſion*, in Men of Authority.

Anno 43. *E.* 3. *William Latimer* exhibited

bited his Petition in Parliament unto our Lord the King, and to his Council, ſhewing that he had the Wardſhip and Marriage of the Heir of *Robert Latymer*, by mean Grant from the King, and held the ſame until Monſieur *John at Lee*, then Steward of the King's Houſe, ſent a Serjeant at Arms to bring them to *London*, and commanded him, being come, not to depart without his leave, upon payment of 1000 *l.* and afterwards would not give him leave to depart until he had ſurrendred the Body of the ſaid Heir, and the King's Patent unto him the ſaid Monſieur *John at Lee*; and thereupon the ſaid *John* was put to reaſon before the Lords, *&c. no.* 20, 21. and alſo the ſaid *John* was put to reaſon before them for this; When he was Steward of the King's Houſe, he cauſed divers to be attached by their Bodies, ſome by Serjeants at Arms, and ſome otherwiſe, as *W. Latymer* and others to be brought before the King's Council, *&c. n.* 22. and alſo for executing the Authority of Steward out of the Verge, *n.* 23. and alſo for diſcharging out of *Newgate*, by his own Authority, and againſt the Judges Commandment, *Hugh Levenham*, an * *Approver*, who had

A great Oppreſſion.

*Promooter.

had appealed ſeveral men of Felonies, *&c. n.* 24. and alſo, that he being ſworn by the King's Councel, did bargain with *Nicholas Levayn* for the Manor of *Cainham* in *Kent*, which the ſaid *Nicholas* claimed to hold during the Minority of *John Staynton*, whereas the ſaid *John at Lee* knew the ſame was never holden of the King in Chief of the Caſtle of *Dover*, *n.* 25.

Theſe be the Particulars wherewith the ſaid *John at Lee* was Charged. It appeareth *W. Latymer* accuſed him at the firſt, but not the reſt; and I imagine that the Commons accuſed him of the Second and other Particulars, for that they are ſaid ſomewhat generally, and are offences againſt the Liberties of the Commons; and alſo for that divers of the Commons were preſent at the hearing; And for the Fourth and Fifth Particulars, I conceive the King's Councel accuſed him thereof, for that one is an Offence againſt the legal Proceedings of Juſtice, which then was that of the *Approver*, viz. *He which accuſeth any one of Felony*, &c. *ſhould remain in Priſon as well as the accuſed until Trial.* Of later times the Accuſer puts in Sureties to proſecute; and the other Offence is a particular

ticular wrong done unto the King in his Revenues: And had any private perſon accuſed him of this, their Petitions would have been recorded as well as *Latymer*'s: But the Lords proceeded againſt him upon *Latimer*'s Accuſation, and then upon the reſt ſeverally, and they did not mingle one with another.

Anno 50 *E.* 3. The Commons accuſed and impeached *W. Ellis*, *n.* 31. and afterwards *John Botheil* and *W. Cooper* exhibited their Bills againſt him, to this effect;

To their Thrice Redoubted King, and to his Sage Councel, ſheweth John Botheil *of* London, *That the* Monday *next after the* Aſcention, *in the Fortieth Year of our Lord the King, that now is, a Ship of* Scotland *in* Pruſe, *was chaſed by Tempeſt into* Likebread (*whereof the Maſter's Name is* Henry Luce) *Charged with divers Merchandizes*, &c. *and that the ſame day one* William Savage, *Clerk, and Servant to* William Ellis, *by Command of the ſaid* William, *took of the ſaid* Ship *for the Merchandizes not diſcharged there*, 17 Nobles *and a* Laſt *of*, &c. *and becauſe that* W. Ellis *knew that* W. Cooper *was to*

come to the Parliament, and ſhew theſe and other Grievances in aid of the Merchants, and alſo to ſhew how the great Prices of Herrings *might be amended in aid of the whole Realm, the ſaid* W. Ellis, *by falſe ſuggeſtion, cauſed the ſaid* W. Cooper *to be Arreſted and put in Priſon in the Tower for three Weeks.*

May it pleaſe you, *&c.*

Here I obſerve that the Accuſation of a private perſon ought to be legal and certain, as that was.

This Accuſation conſiſts of two parts; The unjuſt taking of 17 *Nobles*, &c. from the Merchant of *Pruſe*, and the Impriſonment of the Petitioner by falſe ſuggeſtion to the King.

Upon hearing of the Matter, the Lords Ordered, That as for the Complaint tovching the 17 *Nobles*, it ſhould be ſent to the *Kings-Bench* to be tried there; but the Lords themſelves determined the Impriſonment upon the falſe ſuggeſtion to the King, and awarded *Ellis* to priſon, to pay Fine and Ranſom to the King, and Dammages to the Accuſers.

The Lords received the latter part of this Complaint for two Cauſes; The one,

one, for the falſe Suggeſtion to the King, limited by the Statute of 31 *E.* 3. to be puniſhed by the *Chancellor*, *L. Treaſurer*, and the *Councel* if he be untrue; all which were preſent in the Parliament.

The other, For a Scruple which might ariſe out of the Words of the Statute, which provides for falſe Suggeſtions only to the King himſelf. *Whereas* Ellis *his falſe Suggeſtion was by a Letter written to one of the Kings Servants, which being ſhewed to the King, his Majeſty cauſed the Petitioner to be impriſoned.* And this the Lords expounded to be in *Ellis* a Suggeſtion unto the King himſelf. And had this Point been truly triable at the *Common Law*, the Lords had referred it thither: *This is but my own Conceipt.*

Anno 5 *R.* 2. *Numb.* 4. *Richard Clevedon* Eſquire, by his Bill exhibited to the King in Parliament, accuſeth Sir *William Cogan* Knight.

Anno 5 *R.* 2. *Numb.* 45. The Mayor, Bayliffs and Commonalty of *Cambridge* were accuſed, *&c.*

The next of this kind is a very ſlanderous Accuſation of the *Chancellor*, which I will briefly declare, and the

whole proceedings therein, for that it differs in ſome points from the reſt.

The Parliament of 7 *R.* 2. at *Salisbury* began the *Friday* after the Feaſt of St. *Mark* the Evangeliſt, *April* 29. On the 24*th*. of *May* next, *John Cavendiſh* Fiſhmonger, complained in this Parliament:

The Fiſhmonger contra L. Chancellor.

Firſt, Before the Commons of *England* in that Aſſembly, in preſence of ſome Prelates and Temporal Lords, and afterwards before all the Prelates and Temporal Lords in full Parliament.

In the beginning of this Complaint, he deſired the Lords (for God's ſake) to grant ſure and ſpeedy protection for the ſafety of his Life, and that he might have ſufficient Surety of the Peace againſt thoſe of whom he would complain; and eſpecially he demanded Surety of Monſieur *Michael de la Poole*, Chancellor of *England*; and accordingly the Chancellor did (at the Commandment of the King) find Sureties, *viz.* Two Earls, *&c.* Then the *Fiſhmonger* rehearſed, how that all the laſt Parliament which was held at *Weſtminſter*, at *Allhallontide* in the ſame year, he did ſue by his Bill to have reſtitution of certain Merchandizes of great value, (from

(from *Geo. Mansfield* and three others) which was loſt upon the Seas by them at ſuch time as they had undertaken the Safeguard of the Seas, and of the Merchandizes paſſing and coming in the mean time, againſt all Enemies except Royal Power. The which was endorſed, ſaith he, and committed to the Chancery, to diſcuſs and determine the Matters therein comprized, according to Law and Reaſon. Whereupon he dealt with one *John Otrey*, a Clerk, and Houſhold-Servant to the ſaid *Chancellor*, for his Maſter's Favour and Furtherance in the Buſineſs. The Clerk, after he had viewed a Copy of the Bill, and conſidered of the Buſineſs, promiſed, that for Forty Pounds to his Lord's uſe, and Four Pounds to his own uſe, he ſhould have ſpeed: That he gave his Bond for 44 *l.* to be paid at a Day to come, and afterwards delivered unto the ſaid *Otrey* certain *Herrings* and *Sturgeon*, to the value of 9 or 10 *Marks*, to the uſe of the ſaid *Chancellor* in part, and three yards of *Scarlet*, which coſt him 32 *s.* unto *Otrey*, for his own uſe, in part of the ſaid 4 *l.* Notwithſtanding all which, he found no Favour from the *Chancellor* in his Suit, but was delaied,

laied, and ſtill is, and cannot have Juſtice therefore.

That the ſaid *Otrey* told him, that he could have had more Money of his Adverſaries to have been againſt him; which made him ſuſpect the worſt. But, ſaid he, whether the *Chancellor* ſhall be reputed privy to this, God knoweth; judge you My Lords; for the *Chancellor* hath paid him for his *Herrings* and other Fiſh, and ſent him his Bond cancelled; but whether he did it out of Conſcience, or to avoid Slander and Reproach, he knew not; Judge you, My Lords: but he was not paid for his three yards of *Scarlet*.

The Chancellors *Anſwer.*

Unto this the *Chancellor* made his Anſwer, not preſently, but at another time; for the Record ſaith, He Anſwered firſt before the Prelates and Lords, and afterwards before the Lords and Commons; whereas the Commons were preſent when the Complaint was made, it being *in pleno Parliamento.*

And in the Judges Award, to whom this Matter was afterwards referred, it is ſaid to be *coram Magnatibus & Communitat' in Parliamento.* So that the Anſwer was made ſome other way.

Firſt,

First, He proteſted his Innocency touching the Delay of Juſtice, and ſhewed how the Delay was through the Difficulty of the Cauſe, and vouched the Juſtices and the Serjeants, who had often heard the Pleadings.

Touching the *Bribery*, he ſwore by the Sacrament he had no knowledge thereof, until upon Accompt with his Officers, he found thoſe Fiſhes not paid for; and then he preſently cauſed them to be paid for, and the Bond cancelled, and ſent him. He denied that his Clerk moved him in that Buſineſs; all which he offered to prove in ſuch manner as the King and the Lords ſhould ordain, and demanded Juſtice againſt the *Fiſhmonger* for the Slander. Unto which the *Fiſhmonger* preſently anſwered, and ſaid, He did not accuſe the *Chancellor* himſelf, but his Clerk only. The Lords examined the *Fiſhmonger* and the *Clerk* about the Bond, and his Adverſaries on their Allegiance, whether they had given any thing, or promiſed to give? And finding tde *Chancellor* free from *Bribery*, the Lords acquitted him of his Accuſation aforeſaid; then at the *Chancellor*'s Requeſt, the *Fiſhmonger* was committed until he found Sureties to appear *de die in diem*

The Chancellor *acquitted.*

diem before the Lords, and before any Judges who ſhould be aſſigned. The Lords committed the *Clerk* alſo; and afterwards the Parliament growing to an end, the Complaint was referred wholly to the Judges to hear and determine the ſame, as well for the King, as for the Parties. *Auxi avant come les Peres de Parliamento*, might have done, if the Plaint had been fully treated in their preſence, and in the Parliament.

The Proceedings before the Judges were in a Schedule, annexed to the Parliament-Roll, and were thus;

A Commiſſion was granted in Parliament unto *Treſſilian*, Chief Juſtice of the *King's Bench*, and *Bellknap*, Chief Juſtice of the *Common Pleas*, to hear and determine.

They met at *Weſtminſter June* 19. and were aſſiſted by the *Lord Treaſurer*, *Lord Keeper*, *Lord Privy Seal*, the *Maſter* of the *Rolls*, and the King's two *Serjeants*, *&c.* and they called the *Fiſhmonger* before them, and cauſe to be recited the ſaid Accuſation, and the *Chancellor's* Anſwer; and then demanded of him what he could ſay why he ſhould not undergo the

the Penalty of the Statute againſt ſuch Scandals, eſpecially when as the *Chancellor* hath acquitted himſelf in Parliament, and is yet ready to acquit himſelf by any way poſſible?

The *Fiſhmonger* denied that he ſlandered the *Chancellor*, but the *Clerk* only, *&c.*

The Commiſſioners conſidering the Accuſation and Anſwer in Parliament, and eſpecially that the *Fiſhmonger* ſaid he could not have Juſtice in his Cauſe before the Chancellor, the contrary whereof was expreſſed and proved out of the Records of the *Chancery*, They adjudged him guilty of Defamation, and to pay one hundred Marks to the *Chancellor*, and to be impriſoned until he could pay the ſame, and a competent Fine due to the King.

The Fiſhmonger *guilty of the* Defamation.

It ſhould ſeem the Lords could find no time to examine the Injuſtice he complained of, and therefore referred it to the Judges. *Anno 6. R.* 2. Octab. Mich. *Numb.* 59. Divers Bills were exhibited this Parliament by the Mayor, Aldermen and Citizens of *London*, concerning the *Fiſhmongers*, and the ſaid Mayor, and Aldermen, and *Fiſhmongers* were preſent at the reading thereof; where *Nicholas Exton*, who ſpake for the *Fiſhmongers*,

mongers prayed the King to receive him and his Company into his Majeſties protection, *Numb.* 59. which was granted, *Numb.* 60. Then one *Walter Sybil*, a *Fiſhmonger*, craved Audience, and ſaid, Theſe Bills were not exhibited for any good zeal to the Commonweal, but for meer Malice to the *Fiſhmongers*, for that the chief Exhibiters of theſe Bills being commanded to priſon for ſundry Miſdemeanors in the time of *E.* 3. were then impriſoned by certain of the *Fiſhmongers*, who then were chief Officers in *London*, for which cauſe Malice was born at that time, *Numb.* 60.

To that, one *John Moore* a Mercer anſwered, The Citizens of *London* went to keep the Peace towards them, unleſs they went about to let into the ſaid City the Rebels of *Kent* and *Eſſex*, as the ſaid *Walter*, and others did. *Numb.* 60.

The ſaid *Walter Sybill* took advantage of thoſe words, and deſired the Lords to bear witneſs.

John Moore thereupon expounded his words, ſaying (as the Report then went) and prayed the Lords that the Truth thereof might be further enquired of in the City.

There is one only Precedent of a Complaint

plaint made by a private perſon in the Houſe of Commons, and of the Commons proceeding therein, againſt a Lord of the Parliament; which was thus:

Anno 15. *H.* 6. *Tho. Philips* exhibited unto the Commons his *Bill* of *Complaint* againſt *John* Biſhop of *London*, for his long Impriſonment upon ſuſpition of Hereſie.

The Commons ſent up the Bill, being written in Paper, amongſt other, to the Lords, without any Meſſage, for ought appeareth upon Record. On *Monday* following the Bill was read, and the Lords *Excogitabant*, That it did not belong to their Houſe *de talibus frivolis rebus conſultare*, and returned it to the Commons.

Hereupon the Commons ſent——to the Biſhop for his Anſwer in writing unto this Complaint; which yet the Biſhop did forbear to do, until he knew the Opinion of the Lords herein, and acquainted their Lordſhips therewith. The next day the Lords anſwered all with one voyce, *Quod non conſentaneum fuit aliquem Procerum alicui in eo loco reſponſurum, Lunæ* 2. *Martii.* In the Parliament begun at *Weſtminſter*, An. 16. *Jac.* Sir *John Bowſer* Knight, complained of

Biſh. *Williams* Lord Keeper.

of the Biſhop of *Lincoln*, the then Lord Keeper; but he was not compellable to anſwer before the Commons.

10 *R.* 2. The Commons accuſed *de la Poole* openly in Parliament before the King and Lords; unto which the Councellors made a good Anſwer (in the Opinion of this Age) yet upon the many Replications of the Commons, and the enforcement of his Oath ſtrictly againſt him, he was Fined and Impriſoned, *&c.* In this Parliament alſo the Lords and Commons procured Commiſſion unto certain of the Lords to enquire of the Enormities of the Realm, and to redreſs them.

The King was ſo highly diſpleaſed with theſe Proceedings, that on the laſt day of this Parliament, being the 25*th.* of *November*, he himſelf proteſted that nothing done therein ſhould turn to the Prejudice of him or his Crown. Afterwards he ſought all means to overthrow thoſe Lords who procured that Commiſſion, *viz.* the Duke of *Glouceſter*, the Earls of *Danby*, *Arundel*, *Warwick*, and Earl *Marſhal*. And at a Conſultation thereupon, he ſent for the Chief Juſtice *Treſſilian*, and ſome other Judges, and his Serjeants at Law unto *Nottingham*,

ham, where, on *Auguſt* 25. *Anno* 11. he propounded certain Queſtions containing all the points of Advantage againſt the Proceedings of the laſt Parliament, which the Judges affirmed to be Treaſon under their Hands and Seals. Then the King thought to proceed judicially againſt thoſe Lords, but they kept together with the Duke of *Glouceſter*, at *Heringby* with a ſtrong Guard: And the King ſent for them, and all doubts of danger to their Perſons, being firſt removed, they came *Novemb.* 3. *Anno* 11. and kneeling before the King's Majeſty, he demanded why they were Aſſembled at *Heringby*-Park in warlike manner? They anſwered, for the good of the King and Kingdom, and to remove certain Traytors from about him, meaning the Lord of *Ireland*, the Archbiſhop of *York*, *Michael de la Poole*, Sir *Robert Treſilian*, and Sir *Nich. Brembre*. And with that they threw down their Gloves and Gages of the Challenging to prove the ſame. Unto which the King replied, This ſhall not be done ſo; but at the next Parliament, which ſhall be the Morrow after *Candlemas* Day, and then all parties ſhall receive according as they deſerve.

The Hiſtory of the Appeal of 11 R. 2.

In the mean time he conveys away the parties accuſed, and acquits them by Proclamation; then ſummoned a Parliament at *Weſtminſter*, *Craſt. Purificat.* 11 *R.* 2.

Where theſe few Lords Appellants came well Armed, which made the King unwilling to come amongſt them; yet at laſt he came. *Hæc ex Ep. fol.* 603.

On the firſt Day of this Parliament, the Duke of *Glouceſter* (one of the ſaid Appellants) kneeling before the King, ſhewed, That whereas he underſtood his Majeſty was informed, that he intended the Depoſing of him, and Advancing himſelf to the Crown, he was ready to declare his Innocency herein, in ſuch ſort as the Lords would ordain. Whereupon the King anſwered, He held him thereof acquitted.

On the ſecond Day of this Parliament, the ſaid Appellants exhibited their Petition to the King concerning ſeveral Articles againſt divers Lords and Commons, whom they appealed of Treaſon. The ſaid Articles being read in preſence of the King and Lords in Parliament, the ſaid Appellants offering to make Proofs thereof, required that

that the ſaid Appellees might be called to Anſwer; and for default of their Appearance, demanded Judgment againſt them. Hereupon the King and Lords deliberated. The Judges of the Common Law, and the Sages of the Civil Law were charged by the King to give their beſt Counſel to the Lords of the Parliament how to proceed in their Appeal rightly. Who, after long Conſultation, anſwered the Lords, That the Appeal is in no point made and declared according to the Order of the Common or Civil Law.

The Lords after long Debate, declared by the Aſſent of the King, that the Offences being committed by the Peers, the Cauſe ſhould be determined in Parliament only, and that by the Law and Order of Parliament only, and adjudged the ſaid Appeal with the Proceſs thereon depending, to be good, according to the Laws and Courſe of Parliaments.

And the Default of Appearance was Recorded, and Judgment given, *&c.* againſt thoſe who made their default.

After which Sir *Nicholas Brembre*, a Commoner, was brought Priſoner before the King and the Lords at the re-

queſt of the ſaid Appellants: And the ſaid Articles being read, he pleaded *Not Guilty*; which he was ready to defend with his Body. Whereupon, the Commons of the Parliament ſaid, that they had ſeen and conſidered all the ſaid Articles, which they found to be true, and that they likewiſe as much as in them lay, did alſo accuſe the ſaid Appellees, which they would have done, and it appertained to them to have done, had not the aforeſaid Appellants purſued the ſaid Appeals. Whereupon was anſwered by the Lords of Parliament, That the Battel doth not lie in this Caſe; but that they upon examination of the Articles, would proceed to Judgment.

The Lords cannot proceed againſt a Commoner but upon complaint of the Commons.

Here I note, That the Lords cannot proceed againſt a Commoner, but upon a Complaint of the Commons: But here is not expreſſed how the Commons came daily to have a ſight of theſe Articles. I deny not, but after they were read in their preſence, (for their preſence is always underſtood in Judicature upon Life and Death *prout poſtea*) they demanded a ſight of the Articles, and conſidered of them apart, and then ſupplied the Defects thereof. And this alſo

alſo is to be obſerved, that the Commons accuſe Commoners, as the Lords do their own Peers. I ſuppſe that *Brambre* was denied the Battel, becauſe the Commons accuſed him alſo; otherwiſe he ought to have it granted upon an Appeal.

Afterwards the Commons themſelves accuſed and impeached divers Commoners, *prout* 2 *Mar.* Sir *Rob. Belknap*, L. Chief Juſtice of the *Common Pleas*, Sir *John Carey*, late Chief Baron, and other Juſtices, *&c.* The Records were brought into the Parliament, at the Demand of the Commons, and the Commons accuſed the Juſtices for their untrue Anſwer made unto ſundry Queſtions before the King at *Nottingham*, to the emboldning of the aforeſaid Offenders in their traiterous Deſigns and Attempts, *&c.* Unto which they anſwered, *&c.* were adjudged, *&c.*

And then follows another Impeachment of the Commons; thus:

The Accuſements and Impeachments made by the Commons of the Realm, againſt *Simon de Burle*, Sir *John Beauchamp*, Sir *John Salisbury*, and Sir *James*

Berners, Knights, do enſue underwritten, whereof the Commons pray Judgment in this preſent Parliament.

Thus much touching the Appeal of 11 *R.* 2. But this begot another Appeal in the 21*th.* of the ſaid K. *R.* 2. in the Parliament begun *Sept.* 14. being the Feaſt of St. *Oſwald.*

Edmond Earl of *Rutland*, *Tho.* Earl of *Kent*, *John* Earl of *Hunt.* *Tho.* Earl of *Nottingh.* *Joh.* Earl of *Somerſet*, *Jo.* Earl of *Salisbury*, the Lord *Deſpencer*, and *William Scroop* Chancellor unto our Lord the King, in their proper perſons delivered unto our Lord the King, then ſitting in the great Hall within the Caſtle at *Nottingh.* in his Royal Eſtate, with a Crown on his Head, a Bill of Appeal againſt *Tho.* Duke of *Glouceſter*, *Richard* Earl of *Arundel*, and *Tho.* Earl of *Warwick.* The which Bill of Appeal is recited in that Parliament, and as it ſeems *per Copiam verborum inde*, was penned by the Advice of ſome Civil Lawyer. It ſeems alſo they were very careful herein to avoid all Errors of the former Appeals.

For in that of 11 *R.* 2. they appealed divers Commoners, but here the Lords appealed none but Peers; then it was done

done by word of mouth, they being called to the King upon ſome other occaſion, but now it was done ſolemnly in writing, and was delivered to the King ſitting in his Throne of State. There they offer'd to prove their Accuſation by Battel (a thing not meet for the Parliament) or in what courſe his Majeſty would ordain it; but here the Bill was read in Parliament, and they ſaid, they have been, and are ready to prove, *&c.* as you our thrice Redoubted King, and this Honourable Court of Parliament ſhould ordain. Nor were they leſs careful in their proceeding to Judgment, to avoid the Errors in the former, *prout* in the Anſwer. But theſe Appeals are now aboliſhed by 1 *H.* 4. *c.* 14. and not without cauſe; for as this Accuſation was extraordinary, ſo were the Proceedings carried with a ſtrong hand; the former by the Lords, this by the King *prout ex Chroniculis in quinto comparet cum Codice* 1 *Maij*, A Brief whereof, ſo much as concerns this Appeal, follows hereafter at large, with the Precedents of 21 *R.* 2. *Ad quod Parliamentum convenire juſſit Rex omnes Dominos ſibi adhærentes, cum Sagittariis & viris armatis, tanquam ad bellum, & contra hoſtes omnino progreſſuri fuiſſent.*

Ipſe vero Rex ut efficacius proficere poſſit, nequam conceptus malefactores de Comit' Ceſtr' *congregari fecit ad velandum locum ſtramine*, &c. *Erexerat autem Rex quandam domum ampliſſimam in Palatio* Weſtmonaſter' *quæ pene totum Palatii ſpatium occupavit; in qua ſibi Thronus parabatur altiſſimus, & pro cunctis Regni Statibus locus largus; & pro Appellantibus, in uno latere locus ſpecialiter deputatus, & in alio latere locus largus pro Reſponſu aſſignatus; ſeorſim vero pro Nobilitatibus Parliamenti, & qui non fuerunt electi per Communitatem. Et Forale nuncupatur Parliamentum.* Thus much of Accuſation by Appeal, (which when any of the Lords accuſed others out of Parliament) was ſummoned; but God be thanked, they are aboliſhed, 1 *H.* 4. c. 14.

Appeals aboliſhed per Stat. 1 H. 4. c. 14.

CHAP.

CHAP. III.

The Parties Anſwer.

THe Party accuſed is to be brought to his Anſwer, otherwiſe the whole Judgment will be erroneous, as was *Mortym.* 23 *E.* 3. *Numb.* 10. and *Spencer's*, 15 *E.* 2. and *John Matrevers*, 21 *E.* 3. *Numb.* 65. *dorſ.* Although the Party be abſent, yet the Parliament hath uſed all means poſſible to have his Anſwer, *prout* 21 *R.* 2. where the Lords Appellants, and the Commons alſo accuſed *Tho. Mortymer* of Treaſon; and the Commons ſaid, That it was notoriouſly known unto them, that the King had ſent his Mandate by *W. D.* a Serjeant at Arms, unto the ſaid *Mortymer* in *Ireland*, commanding him upon his Allegiance to come before the King in all haſte, to anſwer, *&c.* And that the ſaid *Mortymer* having notice thereof, withdrew himſelf among the wild *Iriſh*, where the ſame Serjeant, nor any other Officer of the King's durſt come, for fear of Death: Wherefore, and for that his Offences are notoriouſly known both to the Lords and them, they prayed Judgment, *&c.* The

The King, the Lords, and the Procurators of the Clergy conſidered of the Requeſt of the Commons with good deliberation; and then the Lords, with the ſaid Procurators, by the aſſent of the King and Commons, did award that Proclamation ſhould be made through *England* and *Ireland*, commanding the ſaid *Tho. Mortymer* to render himſelf in proper Perſon to the King in what place ſoever it ſhall be in *England*, within three Months after the 23*th*. Day of *December* next coming, to be at his Anſwer; and they farther awarded, That if he came not, *&c.* that then he ſhall be judged Traytor, and Convict of of all Treaſons whereof he is accuſed, and ſhall forfeit, *&c.*

Then the King adjourned the Parliament, and the Appellants to the 15*th*. of *Hilary* next at *Shrewsbury*; on which Day the ſaid Appellants declared to the King, That it was awarded that Proclamation ſhould be made, *&c. ut ſupra.* The Commons did the like. And for that the ſaid *Tho. Mortymer* came not, they had Judgment.

In 7 *H.*4. The Lords agreed this Judgment againſt the E. of *North.* and the Lord *Bardolph*, who were fled to the Rebels

Rebels in *Wales*, and Proclamation *ut ſupra*, throughout *England*. At the day prefixed they examined the Returns of the Proclamations in the preſence of the Commons, and ſo the Judgment was agreed on in their preſence alſo; and ſo it ought to be in all Caſes of Life and Death. And finding a ſmall Error, they awarded new Proclamations in *London* only; and the Return thereof was again viewed and conſidered in the preſence of the Commons, and then on the next day Judgment was given.

An Anſwer required, though the Duke was known to be dead.

Eodem Anno 21 *R.* 2. The Lords Appellants accuſed alſo the Duke of *Glouceſter* of Treaſon; and although they knew he was dead, they prayed the King that he might be brought to his Anſwer. Whereupon the King ſent his Writ to the Council of *Calice* (unto whoſe Cuſtody he committed the ſaid Duke) to bring him into the Parliament to his Anſwer. The Captain returned his Writ, That the Duke is dead; the which Writ and Return being read, the ſaid Appellants prayed Judgment; and the Commons ſhewed, That the Dukes Levying War againſt the King's Perſon, is notoriouſly known to all the States of Parliament,

liament, and therefore they desired Judgment also, and had it.

And what may not the whole Parliament do when they joyn in one? Yet notwithstanding the King fearing some Error (as it seems) the Lords Appellants besought the King, that if there were any thing on Record, be it by Confession or otherwise which concerned their Appeal, that it might be openly known, and shewn in full Parliament. Whereupon, by the King's Commandment, was read a Commission granted unto *William Richal* Justice of the Common-Pleas, and a Confession of the Duke of *Glouceſter*, made before him, by vertue of the said Commission; yea and *Richal* himself, being commanded, did justifie that the Duke did write the Confession with his own hand, in his absence, and afterwards read it unto him: so careful they were to have something to supply an Answer, I marvel that *Richal* was acquitted of his Proceedings herein at the next Parliament of 1 *H.* 4. where he affirmed that much of this Dukes Confession was altered after he had returned his Commission. He well deserved to die, in that he spake not of it.

Yet

Yet there is one Precedent directly contrary to all this, *viz.* 11 *R.* 2. in that Appeal which happened on this occaſion.

The aforenamed Duke of *Glouceſter*, and four other Lords went to the King, and accuſed the Duke of *Ireland*, the Archbiſhop of *York*, *Michael de la Poole*, and others of Treaſon; the King adjourned them to the next Parliament, promiſing them Juſtice there, and in the mean time conveyed away the Parties accuſed, and then by Proclamation, *Part* 8. *fol.* 603. in the next Parliament, 11 *R.* 2. the Articles of the Appeal being read, the Duke and other Appellants offered to make proof thereof, and required that the Parties appealed might be brought to their Anſwers; and for default of Appearance, demanded Judgment. Whereupon the King did deliberate with the Lords, and commanded the Juſtices, and other Sages of the Law to give their beſt Counſel to the Lords how to proceed rightly in this Matter of Appeal; who after Conſultation therein had, anſwered the Lords, That they had ſeen and conſidered the Tenor of this Appeal, which they ſaid was in no point made and declared according to the Order of

the

the Common or Civil Law. But they gave no Answer touching the Demand of Judgment for default of Appearance; whereupon the Lords deliberated, and after by the Lords assent declared that this Cause committed by the Peers against the Person of the King and State of the Realm, shall be determined in the Parliament only, and by no other Law than by the Law and Course of the Parliament: And that it belongs to the Lords only to judge in such Cases. And with the assent of the King they did judge the same Appeal, and the Process thereupon depending, to be good, according to the Law and Course of Parliament.

Then the Lords Appellants proceeded, and desired to have the fault of Appearance recorded, and Judgment given, and so it was. So likewise 21 *R.* 2. After the King had given the full power of Parliament to determine all Matters begun into the Hands of twelve Lords or six, and six Commoners, or any three. He adjourned the Parliament from *Westminster* to *Shrewsbury* in 15 *Hil.* and there on *March* 22. It was shewed to the King how that *Robert Possington* was impeached at the Parliament at *Westminster*, for being

being with the Duke of *Glouceſter* in levy at *Herring*, *An.* 11 *R.* 2. For which the ſaid Duke was adjudged as Traytor, and therefore they brought the King to ordain the like Judgment againſt *Robert Poſſington*, though he was dead: Whereupon our Lord the King, by the aſſent of the Lords and Knights of Counties, having power, *&c.* awarded the ſaid *Robert* guilty, *&c.* And that he ſhall forfeit, *&c.*

Found guilty long time after he was dead, ſo forfeited his Eſtate.

But theſe extraordinary Precedents cannot lead us into the ordinary courſe of Proceedings; and I alledge them only ſo, as their Errors may be avoided.

To conclude, it is the juſt and conſtant Courſe of Parliament, to bring the Party accuſed to his Anſwer; yea, though he flie Juſtice, yet to ſend out Proclamations into the Countries, that he appear at a Day, or elſe ſuch and ſuch Judgments ſhall be given againſt him. I confeſs this Courſe was omitted in the Judgment againſt Mompeſſon, 18 *Jac. and haply it was not then thought upon; the Judicature of Parliament being ſo long out of uſe; and therefore that cannot be alledged as a leading Precedent.*

The Party accuſed to be brought to his Anſwer.

And

And in that Judgment 21 *H.* 6. againſt Sir *Jo. Mortymer*, upon an Indictment of Eſcape out of Priſon, being committed upon ſuſpition of Treaſon, the ſaid *Mortymer*'s Anſwer is not recorded; yet it is ſaid he was brought before the Lords, and the ſaid Indictment read in his preſence, that he made an Anſwer unto it, though not mentioned. And this proves that the Party is to be brought to his Anſwer; elſe *Mortymer*'s preſence had not been neceſſary.

Anno 7 *R.* 2. *Numb.* 2. The Duke of *Lancaſter* and *Glouceſter* complained to the King, That Sir *Tho. Talbot*, with others, conſpired the Death of the ſaid two Dukes, and prayed the Parliament to judge thereof. The Fact is judged High Treaſon, and Writs ſent to divers Sheriffs to apprehend him, which Writs were retornable into the *King's-Bench*: And upon Proclamation made in *Weſtminſter*-Hall, That upon the Sheriffs Return, and the not-Appearance of the ſaid *Thomas*, he ſhould be convicted of Treaſon, and forfeit, *&c.*

This was extraordinary *in terrorem*: But what may not the whole Parliament do? They may alter Law much eaſier than Form. *In*

In the Anſwer is to be conſidered,

Firſt, In what Cauſes the Party is to anſwer as a Priſoner; and in what as a Freeman.

Secondly, When Councel ſhall be allowed him, and when not.

Touching the Firſt.

The Parliament hath guided their Proccedings therein *ſecundum Legem terræ, & Judicium Parium.* According to the 26*th.* Chapter of *Magna Charta, Nullus liber homo capietur vel impriſonetur,* &c. *niſi per legale judicium Parium ſuorum, vel per legem Terræ.* And therefore in Cauſes Capital, whether the Party accuſed be a Lord of the Parliament, or a Commoner, he is brought a Priſoner to his Anſwer *ſecundum legem terræ, prout*, 4 *E.* 3. *Numb.* 1. &c.

The Lord *Berkley* accuſed by the King for Murder of *E.* 2. *Anno* 1 *R.* 1. *Jo.* Lo. *Gomeniz* and *W. Weſton.* Upon the Demand of the Commons for ſurrendring Forts beyond the Seas, *An.* 4. *R.* 2.

Sir *Ra. Ferrers* Knight, was apprehended for ſuſpition of Treaſon.

Anno 28 *H.* 6. Although the Lords refuſed to commit the Duke of *Suffolk* upon the Commons complaint of him of a common Fame of Treaſon; yet when they accuſed him of particular Treaſon, he was Committed, and brought Priſoner to his Anſwer. But in Caſes of Miſdemeanors it is otherwiſe; then the Party accuſed, whether Lord or Commoner, anſwers as a Freeman.

The Lord within his Place, the Commoner at the Bar; and they are not committed till Judgment, unleſs upon the Anſwer of a Commoner, the Lords find cauſe to commit him, till he find Sureties to attend, *&c.* leſt he ſhould fly; *prout Jo. Cavendiſh* upon the Lord Chancellor's Demand of Juſtice againſt him for his falſe Accuſation, was Committed after his Anſwer, until he put in Bail, *Anno* 7 *R.* 2. And before Judgment.

And ſo *Michael de la Poole*, the ſaid Chancellor, 10 *R.* 2. after his Anſwer, and many Replies of the Commons, was Committed, and preſently Bayled.

Anno 50 *E.* 3. *William* Lord *Latymer*, and *John* Lord *Nevill*, being impeached by

by the Commons, anſwered in their Place: ſo did the Biſhop of *Norwich* and the Lord Chancellor, 7 *R.* 2. And the ſaid Lord Chancellor too, 10 *R.* 2. anſwered in his Place, though afterwards he was committed before Judgment, upon Requeſt of the Commons.

The Biſhop of *Briſtol*, 1 *Jac.* and the Duke of *Buck.* 1 *Car.* 1. All theſe anſwered as Freemen in their Places, their Offences not being Capital. And the like Precedents there are of Commoners.

Anno 50 *E.* 3. *Richard Lyons*, *William Ellis* and *John Beecher* did anſwer as Freemen, being impeached by the Commons. And whereas the Commons did that year alſo accuſe *Adam de Bury*, who was abſent; the Lords ſent for him to come; but he contemned their Authority, and came not. Then the Lords, as it ſeemeth by the Record, ſent to apprehend him, and he could not be found; wherefore they awarded that all his Goods ſhould be put in Arreſt. *Ibid. N.* 17. It is briefly entred, *Adam* was ſent unto to come and anſwer in Parliament; he came not, nor could be found: Wherefore it was awarded, *&c.* Which is ſufficient to prove, A Commoner is not to be brought a Priſoner to his Anſwer for

a Misdemeanor, if he will appear.

5 *R.* 2. The Mayor and Bayliffs by name, and the Townsmen of *Cambridge* were complained of in Parliament, for many Outrages against the Scholars there; and the Lords sent one Writ to the Mayor and Bayliffs that then were, and to the Commonalty, to appear and answer; and another Writ to the Mayor and Bayliffs that did the Outrage; and they appeared in person, and the Commonalty by their Attorney.

This was the Ancient Course.

Yet even in these Days, *viz.* 15 *R.* 2. the Peer of *Holland* complained of a great Riot committed by *Henry Tibb*, and divers others, in the Parsonage-House of one *Williams*. Whereupon a *Sergeant* at *Arms*, by vertue of a Commission to him made, brought up the said *Tibb*, and one more only (the principal doers therein) before the Lords in Parliament; who, upon the Return of the Examination, confessed nhe whole Matter, and were committed. But I suppose the *Sergeant* at *Arms* was sent, for haply they would have obeyed no Writ: and yet he was sent for two of the principal Offenders

ers only. At this Day, if the Commons accuſe a Commoner of Miſdemeanors in ſuch a ſtate of Liberty or reſtraint as he is in, when the Commons complain of him, in ſuch he is to anſwer, *prout* 18 *Jac.*

Sir *Francis Michell*, and Sir *John Bennet* were both committed by the Commons before their complaint to the Lords, and ſo they anſwered as Priſoners: But that in a ſort may be called *Judicium Pariumſuorum.*

18 *Jac.* The Earl of *Middleſex* being then *Lord Treaſurer*, and accuſed of Miſdemeanors only, abſented himſelf from the Houſe: His Charge was ſent to him in writing, and he anſwered in writing. At the Day prefixed for his Trial, he was ſummoned by the great Uſher to appear: He came without his Staff, and kneeled, until the Lord *Keeper* willed him to ſtand up. There he proteſted, That he ought not to anſwer in that Place, and deſired others might not be prejudiced thereby: And I hope they will not.

The Earl did himſelf the firſt wrong, by abſenting himſelf from the Houſe; for he might have ſtayed there until Judgment, unleſs when his own Cauſe came in agitation.

§. 2. *Touching Councel.*

Touching Councel.

In all Cauſes of Felony, Treaſon, *&c.* Councel antiently was denied to the Party accuſed, *prout Anno* 4 *R.* 2. *Numb.* 21. Sir *Ralph Ferrers* was brought to the Parliament under the Guard of the Marſhal of *England*, and arraigned at the King's behalf for ſuſpition of Treaſon, who prayed to the King and to the Lords to have Councel in that Caſe. Unto whom it was ſaid, That in all Matters wherein Councel ought to be granted by the Law of the Land, the King or Lords would allow it. And it was further ſaid unto the ſaid Sir *Ralph*, That foraſmuch as the Matter ſtands ſo much upon Treaſon, That by the Law he ought not to have Councel in this Caſe, of no earthly Creature, but obliged himſelf to anſwer at his peril.

This laſt Anſwer was given upon deliberation. And 5 *R.* 2. *Numb.* 44. Sir *Richard Cogan* Knight, being accuſed by *Richard Clevedon* Eſquire, for extorting 200 *l.* from the Prior of St. *John's* of *Jeruſalem* in a riotous manner, required Councel, which was denied him, for that the Cauſe touched Treaſon.

28 *H.* 6. The Duke of *Suffolk* being accuſed of Treaſon, by the Commons, deſired Copies of the Articles, but no Councel, and he anſwered without Councel.

Primo Car. 1. In the Parliament begun *Febr.* 6. The King's Attorney exhibited Articles of Treaſon and miſdemeanor againſt *John* Earl of *Briſtol*, and he had no Councel allowed him; which was on this occaſion:

Anno 21 *Jac.* The Earl of *Middleſex* was denied to anſwer by Councel touching Miſdemeanors only, that Precedent of 10 *R.* 2. of *Michael de la Poole* being miſtaken, as I conceive. And afterwards the Lords conſidering the Inconveniences that might happen thereby, did order that Councel ſhould be allowed to all Delinquents in all Caſes generally. At the Voting of which Order, the King and Prince were preſent, and I did expect ſome Reply thereunto on the King's behalf, and eſpecially obſerved whether the Prince would any ways diſlike of it, either in Words or Countenance; and he ſhewed none: which made me verily believe that he had been acquainted therewith beforehand; but he was not, as I ſhall make it appear.

In this preſent Parliament, upon reading the Articles of Treaſon and Miſdemeanors againſt the ſaid Earl *6 Maij*, and upon the Earl's Anſwer to them on the ſudden, The Journal is, The Lords did anſwer that he ſhould have Councel allowed him to plead his Cauſe. But on *Monday* the 8th. of *May*, the King ſent a Meſſenger to them, That he not ſuing for a Default in Caſes of Treaſon and Felony: It is an ancient fundamental Law of this Kingdom, and deſired the Lords to proceed with that Caution, that ancient fundamental Laws may receive no blemiſh nor prejudice.

On the 15th. of *May*, the Lords anſwered this Meſſage, That by an Order Dated *May* 24. 21 *Jac. Anno* 1624. Counſel was then preſent, and they had allowed the Earl of *Briſtol* Councel before the Meſſage came *May* 14.

His Majeſty is content the Earl of *Briſtol* to have Councel, although his Majeſty knew that by the Law he ought to have none; but takes Exceptions to that Order of the 24th. of *May* 1624. That it was occaſioned by the Earl of *Middleſex*, whoſe Cauſe was only Criminal, which never till now extended to Caſes Capital.

And that the Judges were neither adviſed with therein, nor the King's Councel heard for his Majeſty; and therefore his Majeſty is not ſatisfied about the general Order, but will adviſe, *&c.* The Lords thereupon allowed him Councel to plead, *&c.* This Parliament of 6 *Feb.* 1 *Car.* 1. was diſſolved before the Cauſe of the Earl of *Briſtol* was heard and determined, and that the ſaid Earl was ſued in the *Star-Chamber* for the very ſame Matter contained in the Articles againſt him in Parliament: All which were but Miſdemeanors. And if it be lawful for me to ſpeak freely, I believe the Lords thought they were but Miſdemeanors, when they allowed him Councel in Parliament: But in Caſes of Miſdemeanors only the Party accuſed was never denied Councel.

In Miſdemeanor the Party may have Councel to anſwer.

Anno 10 *R.* 2. The Commons accuſed *Michael de la Poole* of many Miſdemeanors in open Parliament before the King. Afterwards in the King's Abſence, the Chancellor ſaid firſt to the Lords, That he was Chancellor of *England*, and for the time repreſented the King's Perſon in his abſence; and demanded whether he ought to anſwer in the Preſence of the King, ſince he was impeached of

Acts

Acts done whilſt he was Chancellor.

This received no Anſwer.

Secondly, He ſaid, That he had appointed by the Advice of his Councel Monſieur *Richard le Scroope*, his Brother-in-Law ſhould have the words of his Anſwer to the firſt Impeachment. Whereunto the Lords ſaid, That it was Honeſt for him to ſpeak by his own mouth. And thereupon he made Proteſtation that he might add to and take from that which ſhould be honourable and profitable for him. The which things unto him were granted. And the ſaid Chancellor declared as well by himſelf, as by the mouth of the ſaid L. *Scroop*, That *&c.*

I note here that Councel was not denied him, but that it was only told him, It was honeſt for him to anſwer by his own mouth.

Anno 7 *R.* 2. The Biſhop of *Norwich*, for Miſdemeanors in general, *Numb.* 15. was particularly charged by the Chancellor, *Numb.* 18. The Biſhop ſaid, That albeit in this Caſe he ought to have Counſel, yet making Proteſtation, That at all times he might amend his Anſwer, he would anſwer in perſon, and ſo he did, *Numb.* 19. *Anno*

Anno 1 *Car.* 1. The Duke of *Buckingh.* being accuſed by the Commons of Miſdemeanors, and Copies of the Impeachments, and Anſwered by Councel in this manner, *viz. Die*, &c.

The Duke being in his Place, and ſtanding, his Councel came to the Bar, and then read the Dukes Anſwer, as it was penned in writing. Yet ſometimes in Caſes of Miſdemeanors, when the Party accuſed hath demanded the Copies of the Articles, and Councel, and Time to anſwer, the Parliament hath compelled them to make a preſent Anſwer without Councel; but this is rare, and I have ſeen but one Precedent of it.

The Mayor and Commonalty of Cambr. *accuſed.*

Anno 5. *R.* 2. *Die Animarum*, Numb. 45. The Mayor, Bayliffs and Commonalty of *Cambridge* were accuſed by *&c.* For that they in the late Tumults and Wars confederated with other Miſdoers, did break up the Treaſury of the Univerſity, and compelled the Chancellor and Schollars to releaſe to the Mayor all their Liberties, and all Actions, *&c.* In *Num.* 46 & 47. Several Writs were ſent to command them to appear. They appear ing at the Day, and anſwering to ſuch Articles as were objected by the King's Councel, and delivering in the two Releaſes

The Parl. hath compelled a preſent Anſwer in Miſdemenors, and without Councel.

leaſes which were cancell'd *Numb.* 48. Then the Chancellor and Scholars exhibited divers Articles againſt them by way of Petition. Upon the reading whereof, it was demanded of the ſaid Mayor and Burgeſſes what they would ſay, why their Liberties ſhould not be ſeized into the Kings hands as forfeited? And they required Copies of the Articles, and Councel, and Reſpite to anſwer, *Numb.* 54, 55.

To the Copy of the Articles, it was anſwered, That inaſmuch as they had heard them read, it ſhould ſuffice; for by the Law they ought to have no Copy. And touching Councel, it was ſaid, That wherein Councel was to be had, they ſhould have it; and therefore they were then to anſwer to no Crime nor Offence, but only touching their Liberties, *Numb* 56.

After many dilatory Shifts, the ſaid Burgeſſes ſubmitted themſelves to the King's Mercy, touching their Liberties, only ſaving their Anſwers to all other matters, *Numb.* 57.

And the King by aſſent of the whole Parliament, granted the aſſize of Bread, and all weights, Meaſures, *&c.* to the Scholars, and to the reſt of the Burgeſſes, yield-

yielding an increaſe of Rent, 59. 6. And there is no farther proceeding againſt them for other Crimes; yet this alſo proves Counſel ought to be allowed in Caſes of Miſdemeanor.

The Replication next which belongs to him or them that ſue.

Q. Next to the Anſwer follows the Replication; and that in my opinion belongs to the Party whoſe Suit it is. If the Commons impeach any man, it belongs to them, if they will reply. And to this end, either they are all, or ſome of them to be preſent when the Party makes his Anſwer, and to conſider thereof apart by themſelves, and to reply if they ſee cauſe. Or elſe a Copy of an Anſwer is to be ſent them; and their Replication expected before any other Proceedings be. If they do not reply, the Lords may: But if the Articles againſt the Party be ſo drawn ex parte Domini Regis, *then it belongs to the King and the Lords alone: And the Commons can neither reply, nor* de Jure *demand the Party to be put to his Anſwer. All this will appear in the ancient Precedents which follow.*

Anno 50 *E.* 3. They impeached *Rich. Lyons* for procuring Patents and Licenſes, *&c.* to carry, *&c.* to other places than to *Calice.*

Calice. For divers other new Impoſitions upon Wools, *&c.* For levying the ſame to his own uſe, without view of a Comptroller, for 20000 Marks in *London*, for the King, and cauſing the King to repay 30000 Marks: For buying of Debts of the King at the 20*th.* penny and leſs, and cauſing the King to pay the whole Debt. In general words, *For many Extortions*, &c.

His Anſwer is,

Firſt, to the third part, and pleads *Not Guilty*; which he is ready to prove: To which nothing is replied.

To the ſeveral Impoſitions, He confeſſed he levied 12 *d.* on every Sack of Wool licenſed, to his own uſe, but by expreſs Commandment of the King, and Aſſent of the Merchants. And for other ſeveral Impoſitions, That he had paid them wholly to the King's Chamber, and fully accompted for the whole year.

Unto this part of his Anſwer alſo there is no Replication recorded, it is drawn up ſo briefly; yet theſe which follow ſhew ſomewhat of what was replied, *viz.* And it was ſaid unto the ſaid *Richard*, that he ſhould bring forth his Warrant by what Authority he did theſe things.

things. But he ſhewed no Warrant in Parliament under the King's Seal, nor otherwiſe; but only he ſaid he had Command from the King himſelf and his Councel to do it. Now whether the Lords willed *Lyons* to ſhew forth his Warrant upon the Reply of the Commons, or otherwiſe, it appears not by conjecture out of other Precedents.

Impeachment againſt the L. Latymer.

Eodem Anno, The Commons impeach the Lord *Latymer*, That contrary to the Proclamation upon the laſt Truce with the *French*, he and his Lieutenants and Officers have taken divers Victuals by force, without paying for the ſame, and that he extorted great Fines and Ranſoms of divers Perſons and Pariſhes of *Betherel* in *Brittayn*, whilſt he was Captain there, for which he hath anſwered nothing to the King. And for the Loan of 20000 Marks made to the King by him, and *Richard Lyons*, to tranſport Wool, *&c.* And alſo through his ill Government, the Fort of St. *Saviours* in *Normandy*, and the ſaid Fort in *Normandy*, called *Betherel*, and many more are loſt. And alſo that he, of his own Authority, diſcharged Spies and Fellows impriſoned by the King, wherein he encroached to himſelf Power Royal.

This

His Answer. *This is the Effect of the Impeachment; the Answer follows.*

First, He said, That saving to himself so much as ought to be saved unto him, as one of the Peers of the Realm, as well in giving Judgment, as otherwise in time to come. And if it please the King and Lords here Assembled, he will willingly give his Answer unto him who will in special object any other thing against him.

It should seem that the Commons advised hereon; for it followeth, *Et puis presentes.* Forasmuch as no person would in special openly accuse the said Lord, vouching the said things in Parliament, but that the Commons would maintain the said Judgment in common, he answered to each Particular.

His Answer to each Particular. 1. Touching the Ransoms that he hath been before impeached for, and the Sums of Money he received, it appeareth that he owed the King 2000 *l.* which he confessed, and submitted himself to the King's Grace for the same. And soon after this, the Commons having heard this Answer of Submission, prayed the Lords that

that Execution might be had of the ſaid 2000 *l.* preſently againſt the ſaid L. *Latymer*, as a thing paſt by the ſaid Submiſſion being made by him as aforeſaid; for it ſhews not any agreement made with the King, nor any Pardon, or other Diſcharge.

And the Lords anſwered, That his Anſwer ſhould be reported to the King, and thereupon Right ſhall be done for the King.

2. Touching the Acts done by his Lieutenants, he ſaid, That he is altogether innocent, *&c.* For he was then in *England*, by the King's Command, and he had no part thereof, *&c.* And the Commons thereunto replying, ſaid, That although he be innocent, yet his Lieutenants receiv'd it in his Name; and therefore prayed he might anſwer to the King for his Lieutenants, if they be not able, *&c.*

3. Touching the Loans of 20000 Marks, he abſolutely denied he had any ſhare or advice therein, he made in a manner a Negative Anſwer to all the reſt; offering Proofs: whereupon witneſſes were examined, but no other

Replications of the Commons mentioned.

W. Ellis impeach'd. *Eodem Anno* 50 *E.* 3. *W. Ellis* was impeached by the Commons, for that he being Farmer to the King of the Petty Customs in *Yarmouth*, and Deputy-Farmer to *Rich. Lyons*, of Tonnage and Poundage, *&c.* he extorted several Sums of Money from the Merchants, and particularly 33 *l.* from a *Scotish* Merchant at *Kirkbread*, who was driven in thither by a Tempest, but unladed no Merchandize there.

His Answ. The said *Ellis* answered in general, He had never taken any thing of the said Merchants by way of extortion; which he was ready to prove.

The Reply. The Commons brought in four Witnesses, who justified the Extortion upon Oath, and then demanded Judgment. And *W. Ellis* rejoyn'd to this Replication, confessed the Receipt of the 33 *l.* and avoided the Extortion.

The Lord Nevile impeach'd. *Eodem Anno*, *John Nevile* was impeached by the Commons, for that he, as Officer to the King, and one of his Privy Councel, had brought divers Tallies of Assignments made by our Lord the

the King, unto divers perſons unto whom he was Debtor, and had thereof due allowances in the Exchequer; but the Parties had of him little or nothing; and eſpecially of the Lady *Rovenſholme*, who is deceaſed, and of *Reignald Love*.

And after he was impeached, for that in this late Voyage into *Britayn*, in the King's Wages in great number of Men at Arms and Archers, for which he accorded with the King, and thoſe he carried with him were not ſufficient, *come Garcone & autres lieux*: And yet he received full payment in deceit of the King, and that by his default many Forts were loſt in *Britayn*.

And alſo at his paſſing at *Southampton*, his Men did much Miſchief to the Country, as if they had been Enemies.

To the Firſt, Touching the Buying of a Debt due by the King to the Lady *Ravenſholme*, he made a very good Anſwer, and denied that he bought any Debt of *Reignald Love* for gain. And the Commons being preſent, deſired that *Love* might be examined therein: and he was examined, and cleared the Lord *Nevil* thereof. And thereupon *Michael de la Poole*, and *W. de Winged* being preſent,

did expreſly aſſirm, That the ſaid *Love* had acknowledged before him and many others, the Day before, That the ſaid Lord *Nevile* had bought the ſaid Debt for gain, *&c.*

And the ſaid *Reignald Love* replying to their Affirmation, ſaid, That he never ſpake any ſuch Words to them or any other. *Et tant eſt autres apres*, &c. And ſoon after the ſaid Knights and Commons affirming that the ſaid *Reignald* did not only ſpeak thoſe Words, but alſo prayed that it might be ſhewed in open Parliament, the ſaid *Reignald* confeſſed, That, *&c.* and was therefore Committed, *&c.*

Touching the Second Point; The L. *Nevile* ſhewed, That he made full Muſter of his Men, *&c.*

Touching the Third, The Pillaging of Souldiers, he ſaid, That he did none; and if any were done, let the Malefactors anſwer. And unto this it was ſaid by the ſaid Lords of the Parliament, That it was reaſon, ſith the King paid the Soldiers their Wages, that the Souldiers ſhould anſwer for their ill Deeds, and the Captains ſhould anſwer for themſelves. And

And thereupon the Commons prayed Judgment againſt the Lord *Nevile*, and that he might be put out of his Office about the King.

Touching the Articles of the Lady *Raveſholm*, It was awarded in Parliament, That the Lord *Nevile* ſhould make Reſtitution unto her Executors. *Quære hoc.*

That he be baniſhed according to the quality of his Offence, as others have been, *&c.*

I have tranſlated this of the Lord *Nevil* almoſt *ad verbum*; it needs no Expoſition.

The Commons were preſent at the L. *Nevil*'s Anſwer, and deſired that one Witneſs whom he had brought with him, and who gave them Information of the Complaint touching the buying of the King's Debts, might be examined. And examined he was in the preſence of two Knights of the Parliament, and they did contrary his falſe Anſwer; and afterwards all the Commons came and teſtified againſt the Witneſs.

This is ſufficient to prove, That the Commons may Reply, and are to be preſent at the Anſwer, or have a Copy there-

of ſent them: But the Commons did not Reply unto the Lord *Nevil*'s Anſwer.

Touching the Pillaging of his Souldiers, for ought appears, the Lords Replied to that part.

Primo Car. 1. *6 Febr.* The Commons impeached the Duke of *Bucks*, and Declared againſt him in writing. The Commons demanded a Copy of his Anſwer, that they might Reply unto it, and it was debated at a Committe, whether the Commons might Reply or no? which was reſolved in the Affirmative, upon view of Precedents, and reported to the Houſe; and then a Copy was ſent to the Commons.

Thus much touching Replication by the Commons.

Where the Articles againſt the Delinquents are *ex parte Dom. Regis*, there the Commons cannot Reply, nor Demand Judgment; for the Suit is the King's, and not theirs.

Anno

Anno 10. *R.* 2. Upon Complaint of the Commons, *Jo.* Lord *Comeniz* and *W. Weſton* were put to their Anſwers; but the Articles were exhibited *de part le Roy.* The Complaint of the Commons was general; and though the Commons be there preſent at their Anſwer and Judgment, yet they did neither Reply nor Demand Judgment.

The King's Steward before whom they were Arraigned, Replied, as ſhall appear by the Precedent at large.

In like manner the Commons demanded that the Biſhop of *Norwich* and others might be put to their Anſwer, and the Articles were drawn *de part le Roy.* And the Chancellor replied to their Anſwer, the Commons not once interpoſing therein.

5 *R.* 2. The Chancellor and Scholars of *Cambridge* accuſe the Mayor, Bayliffs, and Commonalty of *Cambridge*, of many Outrages and Miſdemeanors. They appeared and anſwered. The King's Councel replied, *Numb.* 49.

CHAP. IV.

The next Conſiderable Part in Judicature *after the Anſwer and Replication, is the Proof by Examination,*

First, *Of Witneſſes.*

Witneſſes. THe Practice at this Day is to ſwear the Witneſſes in open Houſe, and then to examine them there, or at a Committee, either upon Interrogatories agreed upon in the Houſe, or ſuch as the Committee in their diſcretion ſhall demand.

Thus it was in Ancient Times, as ſhall appear by the Precedents, ſo many as they are; They being very ſparing to Record thoſe Ceremonies, which I ſhall briefly recite, and then add thoſe of later times.

Witneſſes by the Commons.

Witneſſes produced by the Commons.

Anno 15 *R.* 2. The Lord *Latymer* having anſwered to one of the Commons Complaints touching a Loan of 20000 Marks for 30000 Marks to be repaid, where-

whereof he ſaid he was innocent. It followeth thus immediately, *&c.* And thereupon it was certified in Parliament by Monſieur *Rich. le Scroop*, the late Lord Treaſurer to our Lord the King, and by *W. Wallworth* of *London*, That when the ſaid Loan was made, the ſaid *Walworth* offered in the Name of the *Staplers*, to lend the ſame, and be repaid without Uſury, out of the Cuſtoms of Wool to *Calice*. Whereto the Lord *Latymer* anſwered, He never heard of that Proffer; and others ſwore the ſaid *William Walworth* did make the ſaid Proffer to them.

Anno 15 *R.* 2. The Commons produced four Witneſſes to prove their Complaints againſt *Ellis*, *Les queux Examinees in Parlement*, ſaid, *&c.* And there I obſerve that two of thoſe Witneſſes had exhibited a particular Complaint againſt *Ellis*, concerning a particular wrong done unto Merchants, whereof the Commons complained, and *Ellis* took no exception againſt them.

And afterwards being put to his Anſwer upon their particular Complaints for wrong Impriſonment, *&c.* *Ellis* ſaid, That they betrayed him as he was coming to *London*, and ſo he cauſed them to be

be committed; and the ſaid Complainants affirmed the contrary upon Oath, and it was teſtified expreſly by divers ſufficient men, That, *&c.* agreeing with their Oath.

Eodem Anno John Peecher being accuſed for Extortion, affirmed, he retained it by the aſſent of the Mayor, Recorder, and of the greater part of the Aldermen, and being examined in Parliament, affirmed there, That, *&c.* to the contrary, and then Judgment was given.

Eodem Anno, The Commons accuſe *Jo.* Lord *Nevil* for buying the King's Debts of *Reignald Love*; which the ſaid Lord denied: and the Commons deſired that the ſaid *Reignald* might be examined. And the ſaid *Reignald* being charged upon his Allegiance to tell openly before them the full Truth, ſaith, clearing the Lord *Nevil*; but afterwards he confeſſed againſt him. He was examined in preſence of two of the Houſe of Commons.

Many Complaints were made againſt *Richard Love* and *William Ellis* in the Parliament, and a Commiſſion ſent to enquire of the behaving themſelves in their Offices.

1 *R.* 2.

1 *R.* 2. *Alice Peirce* Not Guilty, and that ſhe would prove by Teſtimony of the late King's Houſhold, whom ſhe named. The Offence being for procuring *E.* 3. privately to revoke an Ordination of his Councel.

The Lords gave her Day, and in the mean time named a Committee to examine Witneſſes.

The Committee were the Duke of *Lancaſter*, Earls of *Arundel*, *Cambridge*, *Northampton* and of *March*. And divers Witneſſes who are named, were ſworn upon the Holy Evangeliſts, and diligently examined upon the Articles objected againſt her. *A Committee for Trial of* Alice Peirce.

The Lord *Beauchamp* was ſworn and examined; and the Duke of *Lancaſter* being one of the Committe, was diligently examined before the reſt of the ſaid Committee, but not ſworn *ad teſtificandum*. Earls and Dukes are not ſworn.

A Jury of the Houſhold was impannelled for her Trial before the ſaid Committee.

The Order made by the Lords for the Examination and Trial. *Per l'aſſent Prelat & des Seigneurs du dit Parlement ordeint fuit que teſtes Articles ſeront trious*

per

per teſtimonies, & per enqueſt d'eux que ſeront de Hoſtel, de dit Appeale & que le verite purroit mieux eſtre conus.

By vertue of this Order, the ſaid Committee did take the Examination of the Witneſſes, and after their Examinations, it follows thus:

Et nient minus ſeroit venire devant le Duc & les dits Commiſſionaries Monſieur K. B. *&c.* And ſo names eight Kuights, and nine Eſquires, *queux fuerint jures a-dire le verite ſi le dit* Alice *fuit culpable de les Articles avant dits, ou nemy.*

Note, This is the only Jury I find Recorded for Miſdemeanors in Parliament. I make no doubt but if the Delinquent doth put himſelf upou the Trial of his Country, That a Jury ought to be impannelled therefore.

But if the Commons impeach any man, they are *in loco proprio*, and there no Jury ought to be; only Witneſſes are to be examined in their Preſence, or they to have Copies thereof: And the Judgment not to be given until the Commons demand it.

For Proof that the Witneſſes ought to be examined in their Preſence, *vide* 50 *E.* 3. The Impeachment of the Lord *Nevile*, where *Richard Love* was examin'd

in

in preſence of two Knights of the Houſe of Commons, who contraried his Teſtimony, *Numb.* 44.

The Proof that a Delinquent may put himſelf *ſuper Patriam*, vide 4 *E.* 3. Where the Lord *Berkley*, who waved his Peerage, was tried by a Jury of *Glouceſterſhire* and *Warwickſhire*, for that he was Arraigned for the Murder of *E.* 2. at *Berkley*-Caſtle *in Com. Glouc.* And he anſwered, That he was ſick at that time at *Bewdley in Com. Wigorn.*

But he was Arraigned upon an Information *ex parte Dom. Regis*, and not upon the Impeachment of the Commons; for then they had been *Patria ſua.* And as the Party may put himſelf *ſuper Patriam*, ſo he may demand Battel: But not when he is accuſed *ex parte Domini Regis*, *prout* Clarence, *Anno* 18 *E.* 4. Nor when he is accuſed by the Commons, *prout* Brembre, 11 *R.* 2.

When the Earl of *Arundel* was brought to anſwer the Appeals, the Lords Appellants threw down their Gloves by way of a Challenge. The Earl anſwered, *Si eſſem liber, non reſurgeram.*

Note, That the Commons had accuſed them ——alſo. *Vide a Herald Parl. lib.*

lib. Mayleresſ. And thereupon it was teſtified openly in Parliament, That our Lord the King had expreſly ſaid that day, before the ſame Lord then preſent in Parliament, *That he knew not how nor in what manner the ſaid* Richard *was come into ſuch an Office about him*; and which is more, *he did not know him to be his Officer.*

Anno 21 R. 2. The Lord *Cobham* being brought to his Anſwer, for procuring a Commiſſion to himſelf and others, in derogation of the King's Prerogative, 11 R. 2. and for executing the ſaid Commiſſion.

He denied the procuring thereof, and that he would not have uſed the ſaid Commiſſion without the King's Commandment, and that he told the King ſo much, and that the King commanded him not to intermeddle therein. Whereunto our Lord the King anſwered and ſaid, That he was in ſuch Governance at that time, that he could not otherwiſe ſay, becauſe of them that were then about him. And that the Lord *Cobham* knew well that the ſaid Commiſſion was made at his Will. The which thing *Jo. de Cobham* did not gainſay at his Trial; and ſo Judgment paſſed on him for the ſame,

ſame, and he adjudged a Traytor. *Et qui non vult.*

Anno 18 *E.* 4. *George* Duke of *Clarence* was Arraigned in Full Parliament. There is no mention thereof in the Roll, but in a Manuſcript of that time, written by a Frier of *Croyland*. *Tam teſtis eſt vera, & diſceptatio ea habita inter duos tantæ humanitatis* Germanos. *Nam nemo arguit contra Ducem niſi Rex; nemo reſpondet Regi niſi Dux. Introducti autem erant nonnulli de quibus à multis valde dubitatur, an Accuſatorum an Teſtium officiis ſunt functi utraque enim officia in eadem cauſa eiſdem perſonis non congruunt. Delevit enim objecta Dux ille per Juſtificationem, aſſeruit, ſi exaudiri poſſit, manuali defenſione teneri cauſam ſuam. Quid multis numeror Parliament les reputantes auditas Informationes ſufficere formarunt in eam ſententiam damnationis quæ ab* Henrico *Duce* Buck. *pro tempore noviter creato* Anglorum *Seneſchallo prolata eſt, poſtea dilata eſt executio, quo ad uſque Prolocutor Communitatis in ſuperiorem Cameram cum ſociis ſuis adveniens, novam ejus conficiendæ rei requiſitionem fecerat, & conſequenter infra paucos dies factum eſt id qualecunque genus Supplicii ſecreti infra Turrim* London.

George *Duke of* Clarence *arraigned.*

No man queſtions the Duke but the K. none anſwers the King but the Duke.

utinam

utinam ſine malo, Anno Dom. 1418. *Regni vero Regis E.* 4. 18. *per Anonimum libris* Cotton.

Here let us examine for what illegal proceedings the Commons deſired to have the Cauſe tried again. The Author ſaith, *Nemo arguit contra Ducem niſi Rex.* This the Commons held to be againſt Law, That the King himſelf ſhould enforce either Article or Teſtimony againſt a Delinquent in a Capital Cauſe: For it is inconvenient, That he who hath the Forfeiture of Life, Lands and Goods, ſhall be Accuſer, Witneſs or Judge. The Commons were preſent at this Trial, and conſidering the Inconveniences thereof, they returned, and made the Requeſt *ut ſupra.*

Againſt Law that the King ſhould enforce Teſtimony againſt a Delinquent.

Primo Car. 1. In the Parliament of 6 *Febr. John* Earl of *Briſtol* was accuſed by the King's Attorney of Treaſon beyond the Seas, 8 *May* 1626. The ſaid Earl petitioned the Lords, That ſeeing ſeveral points of that Charge are grounded upon private Conferences, wherein his Majeſty by Teſtimony becometh a Witneſs, and in caſe the Earl ſhould be convicted, his Commiſſion cometh to the Crown, *&c.* he deſired their Lordſhips

ſhips to put his Majeſty in mind thereof, for the declining his Accuſation and Teſtimony-

9 Maij, Theſe Queſtions were propoſed to the Judges.

1. Whether in Treaſon or Felony the King's Teſtimony is to be admitted, or not?

2. Whether Words ſpoken to the Prince, who afterwards is King, make any alteration in the Caſe?

And the Judges were to deliver their Opinion therein on the 13*th.* Day of the ſaid Month of *May.*

And on *Saturday* Morning, being the ſaid 13*th.* Day, the Judges were deſired to deliver their Opinions.

The Lord Chief Juſtice ſaid, They appointed to meet and to conſider thereof; and Mr. *Attorney* deſired to know the time of their Meeting; and before that time he brought them a Meſſage from the King, *viz.* That his Majeſty was ſo ſenſible of his Honour, that he would not ſuffer the Right of his Crown (which may juſtly be preſerved) to be dampnified in his time. That they might deliver their opinion in any particular Que-

A Royal wiſe Anſwer.

ſtions concerning the Earl of *Briſtol*, but not in the general Queſtions whereof his Majeſty could not diſcern the conſequence which might happen to rhe prejudice of the Crown. Every particular Caſe varying according to the circumſtances.

4 *E.* 3. The Articles were read againſt *Roger Mortimer*; and it followeth thus; Wherefore our Lord the King doth charge our Earls and Barons, Peers of this Realm, That foraſmuch as theſe touch him principally, and all the People of this Realm, That you do unto the ſaid *Roger Mortimer* right and lawful Judgment, ſuch as appertaineth to ſuch an one to have, who of all the faults aboveſaid, is very guilty, as he believeth. And for that the ſaid things are notorious and known to be true unto you, and to all the People of the Realm.

This was all the Proof produced againſt *Roger Mortimer*. The Lords hereupon judged him. But afterwards, *Anno* 28 *E.* 3. *Numb.* 10. they reverſed it as erroneous: ſo that although the King's Teſtimony, confirmed by the common Fame, was 4 *E.* 3. received againſt *Roger Mortimer*, yet it was afterwards adjudged

judged *Nul Accuſament* in the 28*th*. of the ſaid King *E*. 3.

In that Parliament of 18 *Jac*. divers Witneſſes were examined in open Houſe in the Cauſes of *Mompeſſon* and the Lord Chancellor, upon Interrogatories agreed on beforehand, and divers at a Committee. And it was reſolved, That none might be examined upon any thing that might accuſe. Whereupon the Earl of *Southampton*, one of the ſaid Committee, ſignified, That a Scruple did ariſe, Whether Sir *Ralph Horſey* ſhould be examined what Bribe he gave to the Lord Chancellor; and upon the Vote, it was agreed, he ſhould, *diſſentiente Comite* Dorſet.

Eodem Anno, The Lords did find that the Teſtimony of divers of the Houſe of Commons was neceſſary, touching the Complaint againſt *Mompeſſon*, and therefore ſent a Meſſage to this effect.

The Houſe of Commons, before their Complaint exhibited againſt the Lord *Cobham* and Doctor *Feild*, for a Bribe concerning *Egerton*'s Caſe, 18 *Jac*. examined one *Davenport*, but not upon Oath. The Lords, when they had examined *Davenport*,

port, found that the Caſe was not ſo foul as he related it unto the Commons, and therefore ſent his Examination again unto them, and then puniſhed him for his falſe Relation.

CHAP. V.

The Judgment.

FIrſt, Unto whom the Judgment belongeth, and the King's Aſſent and of the Preſence of the Spiritual Lords, the Commons and the Judges.

Secondly, The Judgment it ſelf, and by whom it was demanded, and by whom rendred.

In making of our Antient Laws, the Commons did *Petere* the Lords *Aſſentire*, and the King *Concludere*.

The Commons accuſare & petere.

So in Judgments on Delinquents in Parliament, the Commons might *accuſare & petere Judicium*, the King *aſſentire*, and the Lords only did *judicare*.

§. 1. *That the Judgment belongeth only to the Lords, appeareth by all the old Records that I have ſeen*; prout 4 E. 3. *againſt* Mortymer, *The Earls, Barons, and Peers did Award and Judge by aſſent of the King*, &c.

7 *H.* 4. In the Caſe of the Earl of *Northumberland*, Proteſtation was made by the Lords, That the Judgment belonged unto them only.

For the clearing of this Point, That the Judgment belongeth to the Lords only, *vide* the Proteſtation of the Commons 1 *H.* 7. which excludes the Commons from any Right thereunto, *viz.*

On *Monday*, Novemb. 3. The Commons made their Proteſtation in manner as they did in the beginning of this Parliament and then further declared to the King, That no Record in Parliament be made againſt the Commons, That they are or ſhall be Parties to any Judgment given, or hereafter to be given in Parliament. Unto which it was then anſwered by the Archbiſhop of *Canterbury*, by Command of the King, That the Commons are Petitioners, and not Demanders; and that the King and the

Lords have ever had, and of Right ſhall have the Judgment in Parliament in manner as the Commons themſelves have declared, ſaving in Statutes to be made, and in Grants of Subſidies, and the like, though to be done for the common profit of the Realm, the King will have eſpecially their Advice and Aſſent: And that this Order be held and kept at all times to come.

This excludes the Commons from all Right to Judgment: But whereas it ſaith, the Judgments in Parliament belong only to the King and Lords, That is to be underſtood touching the King's Aſſent only, as apppeareth by the Replication of the Parliament in this Point in 2 *H.* 5. which was thus:

In the Parliament at *Leiceſter*, 2 *H.* 5. *Numb.* 11. *Tho.* Earl of *Salisbury* Petitioneth to reverſe a Judgment in Parliament againſt *John* Earl of *Salisbury*, his Father, in 2 *H.* 4. and one of the Errors aſſigned was, for that the Judgment was not given by the King, but by the Lords Temporal only: whereupon the Earls of the Parliament, at the King's Commandment, gave Copies of the ſaid Judgment of 2 *H.* 4. and of the ſaid Errors aſſigned unto the Kings Serjeants at Law then pre

preſent. *Ad ſequentem ſolutionem Juris Regni in hac parte aviſarentur: Super quod Servientes ad Legem craſtino die, Domino Regi, ac Dominis Spiritualibus & Temporalibus prædictis hoc in Parliamento petierunt ſcrutinium pro Domino Rege in hac parte. Quibus dictum erat ex parte Domini Regis, Quod ipſi procederent ulterius abſque aliquo ſcrutinio habendo quoad declarationem & judicium ſuper ſupradicta*, &c. And afterwards Day was given at the next Parliament which was held at *Weſtminſter, eodem Anno* 2 *H.* 5. In which Parliament the ſaid Judgment of 2 *H.* 4. being examined and diſcuſſed at full, *videbatur tam dicto Domino noſtro Regi, quam etiam Dominis ſuis antedictis*, &c. *quod idem Judicium & Declaratio prædicta verſus eundem* Johannem, *&c. ſunt & fuerunt bona & legalia. Declaratio & Judicium. Per quod conſideratum fuit in præſenti Parliamento per prædictos Dominos tunc ibidem exiſtentes, de aſſenſu dicti Domini Regis, quod præfatus nunc Comes nihil capiat per Petitionem aut Proſecutionem ſuam prædictam; Et ulterius tam Domini Spirituales, quam Temporales prædicti, Judicium & Declarationem prædictam verſus dictum* Johannem *quondam Comitem* Sarum, *ut præmittitur habita ſive reddita de aſſenſu ipſius Domini*

Regis, aſſerunt fore & eſſe bona & juſta & legalia: Et ea pro hujuſmodi ex abundanti decreverunt & adjudicaverunt.

Out of the laſt recited Precedent of 2 *H.* 5. may be obſerved, That the Temporal Lords by Aſſent of the King, may give Judgment on Offenders for capital Crimes; and therefore, Whereas it is ſaid, 2 *H.* 4. That the Judgment belongs only to the King and Lords, that is herein explained.

Obſerve. The King's Aſſent ought to be to Capital Judgments, and the Lords Temporal to be only Judges therein, and not the Lords Spiritual: But in Miſdemeanors, the Lords Spiritual and Temporal are equal Judges, and the King's Aſſent is not neceſſary, as ſhall appear.

§. 2. *In what Caſes the King's Aſſent is neceſſarily required.*

In what Caſes the King's Aſſent is neceſſarily required. Touching the King's Aſſent, it is expreſſed in divers Judgments on Capital Offences, 4 *E.* 3. againſt *Mortimer.*

Anno eodem againſt *Simon de Bereford.* And there be divers other Judgments that year of this Nature, wherein the King's Aſſent is not expreſſed; but againſt *John Matrevers Les Judices Peeres de la terre.*

Peeres de la terre.

de

de la terre, & Judges de Parlement adjudgent & agardant que le dit John be drawn, hanged, *&c.* not mentioning the King's Aſſent. And there are two other Precedents of the ſame Nature briefly Recorded; *Eſtre ou tiel Judgment eſt accorde que ſoit ſait de Burges de* Bayons *&* John Dever. And *Item ou tiel Judgment eſt accorde de* Tho. de Gurney *&* W. de Ogle, not mentioning by whom the ſaid Judgments of —— Death were given.

2 *H.* 4. The Judgment againſt the Earl of *Salisbury* and others, for Treaſon, is by the King's Aſſent; and ſo is the Judgment of *H.* 4. againſt the Earl of *Northumberland*, and 11 & 21 *R.* 2. upon thoſe ſeveral Appeals. In all which the King's Aſſent is recorded. And ſo the Articles objected againſt *Simon de Burley*, without the King's Aſſent, and againſt his will, which I ſhall here recite.

Item, The aforeſaid Dukes, Earls of *Arundel* and *Warwick*.

Anno 50 *E.* 3. *Richard Lyons* pleading a Warrant from the King, which he could not ſhew, followeth thus, *&c.*

And *Tho. Mortimer* continueth his traiterous purpoſe, and by force of men took and impriſoned divers men your Liege,

Liege, &c. Amongſt others, *Simon de Burley* Knight, and him they carried in the Parliament at *Weſtminſter*, held the Morrow after the *Purification* of our *Lady*, in the 11*th.* year of your Reign, and there were ſurmiſed againſt him divers points of Crime and Treaſon, and thereupon was demanded of every Lord there preſent in Parliament, his Advice of the ſaid *Simon*, touching the ſaid Crime. And afterwards the ſaid Dukes and Earls of *Arundel* and *Warwick* would know your Advice Thrice Redoubted Lord. You anſwer plainly, That the ſaid *Simon de Burley* was not guilty of any the ſaid Points, and then they took upon them traiterouſly to have conſtrained you to have given your Aſſent to the Judgment which they have purchaſed againſt the ſaid *Simon* upon the Points aforeſaid. And you Thrice Redoughted Lord would not conſent to any Judgment to be given againſt the ſaid *Simon*. And yet notwithſtanding the aforeſaid Dukes and Earls took upon them Royal Power in prejudice of you, and derogation of your Crown; and without your Aſſent, and againſt your Will, and in your Abſence, and in the Abſence of many other Peers of Parliament, and without their Aſſent

Aſſent, and againſt their Will, awarded that the ſaid *Simon* ſhould be drawn, *&c.* and thereupon cauſed him to be beheaded, but traiterouſly againſt your Crown, Peace and Dignity.

This I have recited at large: Unto which the Duke of *Glouceſter* made no Anſwer, being dead before the ſaid Earl of *Arundel* pleaded the King's Pardon, which was not allowed him.

The ſaid Earl of *Warwick* confeſſed all the Articles in the ſaid Appeal, and put himſelf upon the King's Grace, and the ſaid *Tho. Mortimer* could not be found.

This Parliament begun at *Weſtminſter Die Lunæ poſt Feſtum Exaltationis Sanctæ Crucis*, and was adjourned to *Shrewsbury*. And on *Tueſday* 28 *January*, the Parliament there ſhewed unto the King how that they in the ſaid Parliament at *Weſtminſter* had accuſed and impeached *John de Cobham* in the 11*th.* year of the King's Reign, with others convicted in this Parliament, accroaching to himſelf Royal Power in Judgment. Awarded that the Lieges of the King, *Simon de Burley* and *James de Barners* Knights, ſhould be Drawn, Hanged and Beheaded without Aſſent of the King, and againſt his will, and in his abſence, and in the abſence of many

many other Peers of Parliament, who withheld themſelves, and would not ſit in ſuch Judgment, and againſt their will, traiterouſly againſt the Peace of the King, his Crown and Dignity.

And prayed our Lord the King to cauſe the ſaid *John de Cobham* to joyn in this preſent Parliament to anſwer to the things aforeſaid, and to ordain ſuch Judgment againſt the ſaid *John de Cobham* as the Cauſe demands. The ſaid *Jo. de Cobham* was brought, *&c.* And touching the ſaid Judgment awarded againſt the ſaid *Simon* and *James*, the ſaid *Joh. de Cobham* ſaid, That it was told him by them who were preſent then, That it was the King's Will to make ſuch Judgment againſt the ſaid *Simon* and *James* convicted of the ſaid Judgment and Award which he had ſo given againſt the ſaid *Simon* and *James*, notwithſtanding his Anſwer; Whereupon, *&c.* Judgment was given againſt him, and he adjudged a Traytor.

Here is objected, That the Judgment againſt *Simon de Burley*, was given by the Lords without the King's conſent. Secondly, Againſt his Will. Thirdly, In the King's Abſence. Fourthly, In the Abſence of many of the Peers, and againſt their wills. *Touch-*

Touching the First, viz. *The King's not Assenting.*

It may be Objected, That the Lords gave Judgment against *Weston*, 1 *R.* 2. without the King's Assent, but yet not against the King's Will; for they respited the Execution until the King might be informed thereof. And the Reason then given for the said Respite, was, For that the King is not yet informed of the manner of this Judgment. But whether the Lords proceeded to that Judgment against *Weston*, before they informed the King, because the King's Assent is not necessary, or for that it being the last Day of the Parliament, they had no leisure to inform his Majesty thereof, let the Reader judge: yet it seemeth to me that the King's Assent is necessarily required in Capital Causes and Judgments, for these two Reasons:

First, For that all Precedents mention the King's Assent in Capital Judgments, except that one against *Matrevers*, 4 *E.* 3. which might be the omission of the Clerks, who drew up the Roll; for it is said directly afterwards in the said Bill,

Numb.

Numb.6. That the Peers gave those Judgments in the presence of our Lord the K. and by his Assent: And except that of 1 *R.* 2. against *Weston*, in the last Day of the Parliament, and it was 3. in the Afternoon that Day before the Lords had determined what to do in that Business; so that it may be the Lords were prevented of time herein, to have which, they respited Execution, for that the King was not informed of the manner thereof.

Secondly, For that the Lords Appellants 11 *R.* 2. who had then great Forces about them, were so earnest with the King for his Assent to the Judgment against *Burley*, That the Duke of *Glouceſt.* told him, as appeareth by his own Confession, 21 *R.* 2. *That if he would be King, he should not intreat for* Simon de Burley, *to save him from Death.* And in the end, when his Majesty would not assent to their Judgment, yet they wrought so, that Messengers were sent unto him, and brought word (not before they gave Judgment against *Simon*) and the King's Assent is mentioned in the said Judgment. All which the said Lords would not have done, had not the King's Assent been necessary.

A bold Saying. This Duke of Glouc. *was many years after imprisoned for this at* Calice, *& there died in his Bed.*

And

And afterwards in the Parliament of 21 *R.* 2, The Lord *Cobham* being accuſed for giving Judgment without the King's Aſſent, anſwered, That the Meſſenger brought word, That his Majeſty had aſſented: And yet becauſe he did not gainſay that the King did deny his Aſſent, the Commons immediately demanded Judgment. All which ſeem to imply, That the King's Aſſent is neceſſary in Judgments upon Capital Offences.

Touching the Second, viz. *Judgment againſt the King's Will.*

It is all one with Judgment without the King's Aſſent.

Touching the Third. viz. *In the Abſence of the King.*

The Judgments of this kind are good notwithſtanding, ſo as the King doth aſſent; as that of *Simon de Burley*, 11 *R.* 2.

Touching the Abſence of many of the Peers.

That is to ſay, of many of them, and againſt their will; This cannot invalid their

their Judgment, ſo as the greater number of the Lords be then preſent (accompting the Proxies of the abſent Lords) for it is not material whether ſome Lords do abſent themſelves, or diſaſſent. The chiefeſt Matter is the Aſſent of the Lords who are preſent either in Perſon or by Proxy. The others are to Anſwer for their Abſence without a juſt Cauſe ſhewn, or a proper Aſſent.

In Judgment on Miſdemeanors the King's Aſſent is not required.

§ 2. *In Judgment on Miſdemeanors, the King's Aſſent is not required.*

50 *E.*3. The Lords judged divers Commoners for Miſdemeanors, and the King's Aſſent not mentioned; as *Richard Lyons*, *William* Lord *Latymer*, a Privy Councellor, *John* Lord *Nevil*, a Privy Councellor, *Jo. Peecher*, and others. The King was then ſick at his Mannor of *Eltham*, and on the laſt day of the Parliament, the Lords, Prelates and Commons came before him there, and he heard the Petitioners, and their Anſwers for moſt part read, and alſo Judgment given on the Privy Councellors and others, *dont ils ſe leyron franchement le reſpons de meſme noſtre Seignior le Roy*, *Numb.* 15. Which ſhews that the King had not aſſented to them.

7 *R.*2.

7 *R.* 2. The Biſhop of *Norwich* was accuſed of Miſdemeanors, and judged in 10 *R.* 2.

The Lord Chancellor *Mich. de la Poole* was judged by the Lords for Miſdemeanors, and *Speed fol.* ſaith, That the King was much diſpleaſed thereat; for it appeareth he gave not his conſent. And it was one of the Queſtions demanded of *Treſilian* and others, 11 *R.* 2. Whether the Judgment were erroneous, or not? and reſolved to be erroneous; yet it was not objected againſt any the Lords Appellors that the Judges proceeded without the King's Aſſent.

Q. 3. *The King's Preſence in Parliament.*

In 4 *E.* 3. The King commanded the Lords to do right and lawful Judgment on *Mortimer*. The which Earls, Barons and Peers having examined the Articles, came again before the King, and ſaid, *&c. Ibidem.* The King commanded them to give Judgment on *Simon de Bereford.* The which Earls, Barons and Peers came again before the King, and ſaid, *&c.* And ſo the King was preſent at their Judgment, but not at their Conſultations.

10 *R.* 2. The King was preſent when the Commons accuſed the Lord Chancellor *William de la Poole* of Miſdemeanors, but he was not preſent at his Trial; for he demanded if he ought to anſwer *ſans preſence de dit Roy*, being Chancellor? and in the end he anſwered notwithſtanding.

21 *R.* 2. In the cruel Parliament of the Lords Appellants, the King was preſent at the Parlies: *Non conſtat* whether he was preſent at the Conſultation of the Lords.

5 *H.* 4. The King was preſent when the Earl of *Northumberland* was to be tried upon his own Petition, and ſo were the Commons. And the King delivered the Petition to the Judges for their Opinion; but the Lords claimed their Right: But this was on the *Wedneſday*, and the *Friday* following the King and Commons met there again, and the Chancellor rehearſeth, Firſt, What was done the firſt Day, and the Lords having had competent deliberation on the ſaid Petition, and having heard and conſidered the Statute, They adjudged, *&c.*

It is plain the King was no tpreſent at this Conſultation of the Lords, though at their Judgment.

7 *H.* 4.

7 *H.* 4. He commanded the Lords to adviſe what manner of Proceſs ſhall be made, and what Judgment ſhall be rendred againſt *Henry de Peircy* Earl of *Northumberland*; aud a Week after the Lords declared their Opinion to the King. And it appeareth in that Roll very clearly, that all Evidences and Examinations were ſhewn and taken by the Lords in the abſence of the King, and their Advice alſo agreed on in his Abſence, but the Judgment reverſed in his Preſence.

To conclude, The King may be preſent if he pleaſe, at the Parties Anſwer, in Capital Cauſes, and at the Judgments given, *prout*, &c. But he was never preſent at other times of Proceeding againſt the Delinquent, nor at any Anſwer for Miſdemeanors, for ought I have yet ſeen.

§. 4. *The Preſence of the Lords Spiritual.* *The Lords Spiritual.*

In Caſes of Miſdemeanors, the Lords Spiritual have ever been preſent, but never in Offences Capital. This is ſo generally received of all men, that it is not worth the Labour to prove it; yet I will vouch the Precedents: For it may *In Caſes of Miſdemenor they may be preſent.*

be, out of one or other of them ſomewhat may occur worthy the Obſervation.

In Miſdemeanors.

In 1 *R.* 2. *Alice Peirce* was brought before the Prelates and Lords in Parliament, to Anſwer, and the Prelates and Lords did ordain.

42 *E.* 3. *Numb.* 20, *&c. John at Lee* was put to Reaſon before the Prelates, Lords, Dukes, Earls, Barons, and ſome of the Commons.

7 *R.* 2. *Jo. Cavendiſh* accuſed the Lord Chancellor of Bribery, before the Prelates and Lords in Parliament. The Chancellor Anſwered before the Prelates and Lords.

In Caſes Capital may not be preſent,

In Offences Capital.

In 4 *E.* 3. The Earl of *Kent* was brought before the Counts, Barons *& autres* Grandees and Nobles *en meſme Parlement, &c.* for Treaſon *dorſ. Numb.* 38.

Eodem Anno, The Articles of Treaſon being read againſt *Mortimer*, the King charged *les Counts & Barons, les Peeres de ſon Realme*, to give Judgment. And Judgment was given *per les dits Counts, Barons*

Barons & Peeres come Judges del Parlement.

Item, The King commanded *les dits Counts & Barons* Aſſembled in Parliament, to give Judgment on, *&c.* and ſo were four others tried in the ſame Parliament, all for Treaſon, and not one word of the Prelates, either when the Articles were read, or at the Judgment.

6 *E.* 3. *Numb.* 11, 12. *Poſt Feſtum Sancti Gregorii*, The Parliament being commanded to conſult of the keeping of the Peace, and Puniſhment for the breaking thereof, the Prelates departed, *pur ceo que aviz fuit dits Prelates, que ne attinet pas a eux conſuler de guard de la Pees ne de chaſtiſament de tiel*; yet afterwards, when they heard what was ordained touching thoſe Malefactors, for the apprehenſion of them by Hue and Cry, *&c.* to bring them before certain Commiſſioners to be tried according to Law, the Prelates gave their Conſents alſo to the Act, and added alſo Excommunication by the Aſſent of King, Lords and Commons.

Anno 10 *R.* 2. The Commons prayed That ſuch as gave up Forts, *puiſſent eſtre a reſpons ceſt Parlement. Et ſelon leur deſert puis per guard les Seigniors & Baronage.*

And thereupon *John Gomeniz* & *William Weſton* were brought before the Lords aforeſaid in full Parliament, *&c.* It is to be underſtood before the Temporal Lords; for the Biſhops are never comprized in the Word *Baronage*.

Anno 11 *R.* 2. Divers Lords and others being appealed of Treaſon, & other miſdemeanors, the Prelates abſented themſelves, during the Tryal having firſt made Proteſtation ſaving their Right to be preſent in Parliament. *Regni more ſolito conſiderare, tractare, ordinare, ſtatuere, definire & cætera excercere, cum cæteris Paribus* &c. *Verum quia in præſenti Parliamento de nonnullis materiis agitur, in quibus non licet nobis juxta Canonum Sacrorum inſtituta quomodo libet intereſſe, Eo propter pro nobis & noſtrum quolibet Proteſtatur quod non intendimus nec volumus ſicuti de jure non poſſumus nec debemus, nec intenditur nec vult aliquis noſtrum in Parliamento dum de hujusmodi rebus agitatur vel agitur, quomodo libet intereſſe, ſed nos & noſtrum quemlibet in ea parte penitus abſentare: Jure Paritatis noſtræ, & cujuſlibet noſtrum intereſſend. in dicto Parliamento, quoad omnia & ſingula ibidem excercenda juris, & eorum quilibet ſtatu & Ordine in omnibus ſemper ſalvo.*

The Proteſtation of the Biſhops for ever.

ſalvo. Ad hæc inſuper proteſtamur & noſtrum quilibet proteſtatur, quod propter hujusmodi abſentiam non intendimus nec volumus, nec noſtrum aliquis intendit, nec vult, quod proceſſus habiti, & habendi in præſenti Parliamento ſuper materiis antedictis, in quibus nec poſſumus nec debemus ut præmittitur intereſſe, quantum ad nos, & noſtrum quemlibet attinet, futuris temporibus quomodo libet impugnentur, infirmentur, ſeu etiam revertentur.

This was read in full Parliament and enrolled at the Requeſt of the Commons, I mean the Prelates by the Kings Command and aſſent of the Lords Temporal and Commons. Here the Proteſtation ſaith (*de jure, intereſſe non debemus*) but I think it intends that they could not be preſent by reaſon of the Common-Law, and by reaſon of an Ordinance made at the Councell at *Weſtminſter*, in 21. *H.* 2. By which all *Clergy*-men were forbidden, *agitare Judicium ſanguinis*, upon pain to be deprived both of Dignities and Orders. For ſurely as I think, they might otherwiſe have been preſent both by the Common-Law and by the Law of God. But by ſuch their long conſtant abſence, even from our firſt Parliaments upon Record. The Lords Temporal have only heard and

determined all matters concerning Capital offences, which hath continued in them ſo long that it is become their Right, *&c.*

So that now it will be a wrong unto them the Lords Temporal, if the Biſhops do any way meddle with ſuch Judicatures, either touching the Anſwers, the Replyes, the Proofs, or the Judgement. For where they may not adjudg, they may not do any thing as a Judge that doth conduce to judgment. And therefore as heretofore they would be abſent, Now they cannot be preſent whilſt the Matter is in hand, but are to be abſent altogether *dum de hujuſmodi materiis agitatur*: For ſome or other matter may happen to be Voted in their preſence concerning the Anſwer, Replication, *&c.* or concerning the Form of Judicature herein: And by the Voices of the Spiritual Lords that Vote may paſs againſt the major part of the Temporal Lords, who ſhould ſuſtain wrong therein.

Can they be preſent, and not Vote?

I know that at all Aſſizes and Seſſions divers of the Clergy are preſent till Judgment be given in ſuch Caſes; but their Preſence

Preſence cannot prejudice the Judge at the Aſſizes by Vote, as in Parliament. And at Seſſions the Lay and Clergy are equally in Authority to hear and determine.

Eodem Anno 11 *R.* 2. A Special Act paſſed at the Requeſt of the Commons, to make good thoſe Appeals and Judgments, notwithſtanding that the Spiritual Lords *pur beneſit & ſalvatioun de lour Eſtate*, Cap. 3. *& in Parl. Roll*, N. 28.

This Act, I conceive, was occaſioned by the Clauſe in the ſaid Proteſtation of the Prelates; *Ad hæc inſuper Proteſtamur, &c. quod proceſſus habiti & habendi in præſenti Parliamento ſuper Materiis prædictis, in quibus nec poſſumus, nec debemus intereſſe, ut præmittitur, quantum ad nos attinet futuris temporibus non impugnentur*, &c. For there is no ſuch Act to make good any former Judgment notwithſtanding their Abſence.

And 2 *H.* 5. Upon the Petition of the E. of *Salisbury*, the King & Lords Temporal adjudged the Judgment againſt his Father in Parliament, 2 *H.* 4. to be good, notwithſtanding that it was rendred without the conſent of the Lords Spiritual, which yet the ſaid Earl alledged as Error in his Petition; ſo that by the Judgment

Judgment of the whole Houſe, neither the Preſence nor Abſence of the Spiritual Lords is neceſſary in ſuch Judgments.

In 21. *R.*2. The firſt Petition that the Commons offered was, That before this time many Judgments and Ordinances made in the time of the Kings Anceſtors in Parliament, have been repealed becauſe the Clergy was not preſent in Parliament at the making of the Judgments; and therefore they deſired that the Clergy might make a Proctor with a ſufficient Power to conſent in their wants, unto all Things and Ordinances to be done in this Parliament, *Numb.* 9.

Whereupon the Prelates and Clergy being ſeverally examined, deputed for them all *Tho. de Piercy.*

But in ancient times (*in libro Mailiceſs*) *Numb.* 9. which hath written ſomewhat largely of this Parliament; It is ſaid, The Pardons granted to the Earls of *Arundel*, were firſt repealed by the Aſſent of the Prelates; for which he blames them much, ſaying, *Dederunt ergo locum Prælati Judicio Sanguinis in hoc facto, ita quod dubitatur à pluribus, ſi incurrunt irregularitatem pro negotio memorato, unde contigit quod propter iſtud minus peccatum conſequentur, nam exactum eſt ab iis,*

iis, vellent, nollent, ut Laicam Perſonam conſtituerent, ad Judicium Sanguinis dandum in dicto Parliamento, ſi neceſſe foret, & occaſio emerſiſſet.

Obſerv. No exceptions taken for the Abſence of the Prelates.

I have peruſed all Judgments and Ordinances in Parliament, and do not yet find one, whereto any Exceptions were taken for the Abſence of the Prelates and Clergy.

I find an Exception to the Judgment of the Exile, in 15 *E.* 2. for that it was made without the Aſſent of the Prelates, who were preſent, and proteſted in writing againſt it. And one of the Errors whereupon it was repealed, is, for that it was made without the Aſſent of them, who were Peers of the Realm in Parliament.

But this Repeal was *per dureſs & force, &c. prout* 1 *E.* 3. *c.* 2. So as this cannot be alledged for a Legal Precedent.

5 *H.* 4. The Earl of *Northumberland* came before the King, the Lords and Commons in Parliament. The Lords made Proteſtation that the Judgment belonged to them only, *&c.*

The Petition being read before the King and the ſaid Lords, as Peers of the Parlia-

Parliament (unto whom ſuch Judgments do of Right belong) conſidering, &c. adjudged that it was neither Treaſon nor Felony, &c.

Note eſpecial. *Note*, That all this Parliament, the Biſhop of——was Chancellor, and he as Chancellor, delivered the Opinion of the Lords when they had acquitted the ſaid Earl of Treaſon. Whereby it ſeems that He and the other Biſhops were preſent at the Trial of Life and Death; wherefore though the Record doth here ſay the Lords indefinitely, we muſt underſtand the Lords Temporal only; eſpecially ſince they claimed the ſaid Judgment to belong to them.

In 4 *E.* 3. Judgment was given by the Earls, Barons and Peers, as Judges in Parliament, in point of Treaſon, where the Prelates are not named; and therefore underſtood of the Temporal Lords only. This will be explained by the next of 7 *H.* 4. *Rot. Proceſs coram Domino Rege*, &c.

The King commanded the Lords Temporal, Peers of this Realm, to adviſe what Proceſs to make, and what Judgment to render againſt the Earl of *Northumberland* and the Lord *Bardolph*. The Lords adviſed thereupon, and reported their

their Opinions to the King. The ſaid Lords, Peers of the Realm, by Aſſent of the King, Ordain, That Proclamation ſhould be made for the ſaid Earl and Lord *Bardolph* to appear, or elſe to be Convicted by Award of the Peers in Parliament.

The King did farther demand the Opinion of the ſaid Lords Temporal touching the Archbiſhop of *York*; unto whom the ſaid Lords Temporal ſaid, *&c.*

The Commons prayed the King that they might have Cognizance, *&c.* Whereupon, by Advice of the Lords Temporal, the Returns of the former Proclamations were made at the Parliament-door for the ſaid Earl and Lord to appear.

By Advice of the ſaid Lords Temporal, the Returns of the former Proclamations were examined, the ſaid Lords Temporal conſidered of the Errors therein.

By the ſaid Lords Temporal, with the Aſſent of the King, by their Authority, New Proclamation is granted, the Return whereof is read in full Parliament before the King and the ſaid Lords Temporal.

Whereupon, the ſaid Lords Temporal

ral then being in the ſaid Parliament, by Advice and Aſſent of our Lord the King, by their Authority in Parliament, Awarded the ſaid, *&c.* Convict of Treaſon.

Here all was done by the Lords Temporal from the firſt beginning of the Trial until the Judgment, and yet the Judgment is ſaid to be in Full Parliament, notwithſtanding the Spiritual Lords are not once mentioned, nor intended to be preſent at any time whilſt the Matter of Treaſon was handled.

The Preſence of the Commons in Caſes Capital.

§. 5. *Touching the Preſence of the Commons in Caſes Capital.*

I obſerve the Preſence of the Commons to be neceſſary at the Parties Anſwer and Judgment in Caſes Capital.

Now one Reaſon for the King's Aſſent, and the Commons preſence in ſuch Judgments, may be this; Both King and People are to be ſatisfied for the death of the Subject; therefore all Trials for Life and Death, are publick in the full Aſſembly of the Court: And how can it be ſaid in Full Parliament, when the Commons, one of the States, are abſent?

For

For this purpoſe the Court of Requeſts (called *Camera Alba*) was prepared for ſuch Trials, where both Lords and Commons might meet more conveniently; yet though the Commons were preſent at ſuch times, they had no Voice there. But at their Return to their own Aſſembly, they conſidered among themſelves, if the Proceedings were Legal; and might come again and ſhew it, and require a Rehearſing of that Cauſe: as they did at the Judgment of the Duke of *Clarence*, 18 *E.* 3.

Nor are the Commons to be preſent when the Lords do conſider of the Delinquent's Anſwer, and the Proofs, and do determine of their Judgment.

The Precedents are theſe.

10 *R.* 2. *Gomeniz* and *Weſton* were brought before the Lords and Commons *ſeaux a la blanch Chambre*, and Anſwered on *Friday*, 27 *Novemb.* and there they were delivered to the Conſtable of the Tower, who was commanded to bring them again the next Morning. In the mean time, the Earls, Barons and Baronets aſſembled, and adviſed from the time that the ſaid Anſwers were given in

in Parliament on *Friday* until part of *Saturday* to the hour of Three, of the things touching the Anſwer aforeſaid, and then the Priſoners were brought in to the Parliament.

10 *R.* 2. *Rot. de Pardonatione* Haxei, 7 *Febr. Anno prædicto*, *Prædictus* Tho. Haxei *coram Nobis & omnibus Dominis Parliamenti Noſtri exiſtentibus in Alba Camera adductus fuit, & Billa prædicta coram præfato* Thoma *ibidem, per Præceptum Noſtrum lecta fuit, & Quæſitum fuit per Chariſſimum Avunculum Noſtrum Ducem* Aquitain *&* Lanc. *Seneſchallum* Angliæ, *à præfato* Thoma, *ſi ipſe dictum præfatum Communibus tradidit.*

5 *H.* 4. The Earl of *Northumberland* was brought to his Trial on *Wedneſday*; Then the Commons were preſent; but I do not find that they were preſent with the Lords between *Wedneſday* and *Friday*, when the Lords adviſed on the Earl's Petition. This Record mentions not where the Aſſembly was, *Numb.* 7. *H.* 4. *Quint.* of his Reign.

After the Lords had Awarded Proclamation againſt the Earl of *Northumberland*, and the Lord *Bardolph* to appear at a Day,

a Day, or Judgment to be given. The Commons not being acquainted therewith, they came and prayed the King, they might have cognizance what was done touching the ſaid Rebellions of *Salop*, and elſewhere within the Realm: whereupon, New Proclamations were made, and the ſubſequent proceedings were done in full Parliament, in preſence of the Commons; and the Record ſaith, upon the Requeſt of the Commons. A Queſtion hath been often asked, Whether the Commons did heretofore ſit at Conference with the Lords? Which I cannot very well reſolve; but verily believe, That at all theſe Arraignments the Commons did ſit with the Lords.

10 *R.* 2. *Gomeniz* and *Weſton* were brought before the Lords and Commons ſitting in the *White Chamber*. The Words are, *Devant les Seignieurs avant dits en plein Parlement*, &c. But the Commons are here intended by the Words *en plein Parlement*. And ſo was the Commons Demand, that they may be tried before the Lords.

No other Records ſpeak whether they did ſit or ſtand.

In Judgments on Miſdemeanors,

The Preſence of the Commons not neceſſary.

The Preſence of the Commons is not neceſſary, unleſs they impeach a Delinquent, *prout* 50 *E.* 3. And then they were preſent at all the Anſwers of thoſe whom they Impeached, and demanded Judgment.

And when the Lords had rendred their Judgment againſt the Lord *Latimer*, to be priſoner with the Marſhal, and to make Fine and Ranſom to the King, the Commons prayed the King, he might alſo be put out of all his Offices, and eſpecially from being Privy Councellor: Which the King granted.

And when the Lords had determined one part of the Complaint of the Commons againſt *William Ellis*, touching a wrong done to certain *Scottiſh* Merchants, the Commons prayed a general Enquiry might be made of the Reſidue whereof they complained; which the Lords granted.

And when the Lord *Nevil* Anſwered, They required that one *Richard Love* might be examined, to prove that which the ſaid Lord denied, and they departed;

ed; but two of the Commons remained, and heard the Examination, and told the Lords, That the ſaid *Richard* had related it to the Commons otherwiſe the day before; which the ſaid *Richard* denied. Then all the Commons came and juſtified it again, and thereupon the ſaid *Richard Love* confeſſed it, and on their Demands was committed.

This ſhews what Intereſt they have in their own Impeachments.

So in 10 *R.* 2. When the Commons had Impeached the Lord Chancellor, They were preſent at his Anſwer, and ſo often Replied, and enforced his Oath againſt him, and required him to be Committed, and ſo he was before Judgment, but Bayled preſently.

But if the Commons do only complain, and do neither impeach the Party in Writing, nor by word of Mouth in open Houſe, nor demand Trial to be in their Preſence; In theſe Caſes it is in the Election of the Lords whether the Commons ſhall be preſent or not.

And therefore when they complained of *Alice Peirce*, 10 *R.* 2. The Lords deferred her Trial until the Departure of the Parliament, that is, till the Com-

mons had leave to depart. And if the Commons preſence be not neceſſary in ſuch Caſes where they complain, much leſs is it wherein they complain not; yet they have been preſent when they did not complain; but that was upon an extraordinary Cauſe, *prout* 7 *R.* 2.

A Fiſhmonger exhibited his Complaint, firſt to the Commons againſt the Lord Chancellor, and afterwards to the Lords in Full Parliament, in preſence of the Commons. But they were preſent no doubt at the Lord Chancellor's Requeſt, That he might clear himſelf in Publick of the Slander, and ſo he did.

The Preſence of the Judges.

The Preſence of the Judges.

In Caſes Capital, the Judges are to be preſent alſo, otherwiſe it is not a Full Court; but they have no Voyce. And though there be divers Precedents that complain of the Prelates, *prout* 21 *R.* 2. & 2 *H.* 5. and this laſt of the Commons, yet there is not one Precedent that finds fault with their Abſence in theſe Caſes; for they are not *tractare cum cæteris Magnatibus*, but *cum cæteris de Concilio.*

Here

Here may be Objected that which *Treſilian* and other Judges anſwered to one of the King's Queſtions, 11 *R.* 2. touching the Judgment of *Michael de la Poole*, That the ſame Juſtices and Serjeants would not give the ſame Judgment, becauſe it ſeemeth to them, that the ſame is irrevocable, as erroneous to every part. *Vid.* Print. Stat. 21 *R.* 2. *Treſilian* was much miſtaken, as much as in the other Anſwers, whereby he determined that to be Treaſon; and ſo here he gave his Advice, not his Conſent: And yet he ſaith, he gave his Conſent. Read but a little further, and you ſhall find in the very ſame place, as followeth; Which Queſtions and Anſwers, as well before the King, as before the Lords and Commons, were read and perceived; and it was demanded of all the States of Parliament, how they thought of the Anſwer? And they ſaid, They thought the Juſtices made and gave the Anſwers duly and lawfully, as good and liege People of the King ought to do.

And in the ſame manner Sir *Tho.* of *Shelton*, Learned in the Law, and *Will. Hawkford*, and *Will. Beechley*, the King's Serjeants, being demanded by the King, of

of their Advice, *&c.* and my Lord *Will. Thurning* of the Common Pleas, *&c.* That the Declaration of Treaſon not declared, belongeth to the Parliament: And if he had been demanded, he would have ſaid in the ſame manner.

And in like manner my Lord *William Rickill*, Juſtice of the Common Bench, and after the coming of my Lord *William Clopton*, Chief Juſtice, he ſaid thus; Wherefore the ſaid Anſwers be judged good, and affirmed ſufficient in the ſaid Parliament.

Whereupon the King, by the Aſſent of the Lords Spiritual and Temporal, and the Procurators of the Clergy, and the ſaid Commons, and by the Advice of the ſaid Juſtices and Serjeants there being, It was Awarded and Adjudged, *&c.*

Here you ſee the Manner of the Judges Aſſent, *viz.* their Advice only. Nor ſhall you find their Aſſents to any Statute; yet the Judges have ever uſed to be preſent at the Trials in Parliament upon Life and Death, 5 *H.* 4.

The King delivered the Earl of *Northumberland*'s Petition to them. And at the Trial of any Peer out of Parliament, the *Judges* are ever preſent on that Day; and

and their preſence is neceſſary for their Counſel to the Lords; but their Aſſent is not neceſſary to the *Judgment*.

§. *The Manner how the Lords reſolve on their Judgment.*

How the Lords reſolve on their Judgments.

How this was Anciently, appears in the Appeals, 21 *R.* 2. Touching the Death of *Simon Burley*, *viz.* It was demanded of every Lord who was preſent at the ſaid Parliament, his Advice of the ſaid *Simon* touching his Crime.

Eodem Anno, in the Print. Stat. 21 *R.* 2. The *Judges* Opinions were demanded in the ſame manner; beginning with the Serjeants, *&c.* and ſo aſcending to the *Chief Juſtice*.

And at this Day the Queſtion is put by the Chancellor or Lord Keeper, and the puiſne Baron anſwers firſt, Content, or not Content; and ſo the Lords in Order: But their Lordſhips do firſt debate the *Judgment* amongſt themſelves, and the Queſtion is out of that which ſeemeth to be moſt generally agreed on.

In the Judgment it ſelf is to be conſidered,

Firſt, Whether it be *ultra Legem.*

Secondly, By whom to be Demanded.

Thirdly, By whom to be Rendred.

Touching the Firſt.

Judgments in Parliament for Death, have been ſtrictly guided *per Legem Terræ*; otherwiſe they would not have judged the Earl of *Kent*, the King's own Unkle, to be Hanged, Drawn and Beheaded, might it be left to their Diſcretion. *Vide Literas E.* 3. to the Pope, ſpeaking of this Earls Judgment by the Parliament, for Treaſon; *Cui Sententiæ ſubductis tamen quibuſdam opprobrioſis, & in deteſtatione tanti Sceleris, de Rigore Legis noſtri Regni inſligenda erat, Dolentes acquievimus*, 4 *E.* 6. But the Roll is loſt.

The Lords judged *Mortimer* to be Drawn and Hanged as a Traytor, 4 *E.* 3.

Simile pro Simone de Bereford, *N.* 2.

Ibidem,

Ibidem, Numb. 3. They judged *John Matrevers* to be Drawn, Hanged and Beheaded.

10 *R.* 2. *Weſton* adjudged a Traytor for delivering up of Caſtles, Forts, *&c.* And ſo *Jo.* Lord *Gomeniz.* a *German*, was adjudged to die; but becauſe he was an Alien, and a Baronet, and was not the King's Liege-man, he ſhould be Beheaded; That being the Death uſed in *Germany* to Gentlemen.

10 *R.* 2. *Simon de Burley*, the Earl of *Arundel*, and others were Adjudged to be Hang'd, Drawn and Beheaded for Treaſon. They differ ſomething, yet herein they agree, That the opprobrious Death of a Traytor, is, to be Drawn and Hang'd; which the Parliament could not alter, no not in their *Judgments* againſt the King's own Unkle. It was *per Legem Regni inſtigenda.* The King might pardon all, and uſually did, except Beheading of the Nobility of his own Blood, and of later Times, to all Noblemen.

As the Parliament could not diſpence with,

with, nor omit any part of the *Judgment* on Traytors, ſo they could not add more than the Law required. And this may appear by their Judgments of Forfeitures of the Parties Eſtate.

The Parliament, 4 *E.* 3. ſpoke nothing what *Mortimer* ſhould forfeit to the King: He well knew the Law could give the King all his Lands, in Poſſeſſion, Reverſion, or Service. *Vide The Reſtitution of* 28 *E.* 3. *Numb.* 10.

The Ordinances in 50 *E.* 3. *Numb.* 45. againſt Women which ſhall make ſuit, *&c.* to the King; againſt *Alice Peirce* by Name, is, Upon pain of as much as ſhe can forfeit, and to be baniſhed. But had it not been for the former Ordinance, the Lords would not have given any ſuch Judgment againſt her; Her Offence being only for procuring Favour to her Friends from the late King, contrary to a former Order of Council.

11 & 21 *R.* 2. The Lords Adjudged the Forfeitures to the King, of ſome Convicted on the Appeals, greater than the

the Law will give; but they passed Special Acts in each Parliament to Confirm both the *Judgments* and *Forfeitures*.

1 *H.* 4. The Lords Adjudged and Declared the Earls of *Kent*, *Salisbury*, and others to be Traytors, and to Forfeit, *Numb.* 30. as the Law of the Land willeth.

7 *H.* 4. They Adjudged the Earl of *Northumberland*, and Lord *Bardolph* to Forfeit for Treason, all their Lands in their own Demesne, or where others were seized to their Use.

And so in Fines and Amerciaments, the Judgments anciently were indefinite, *prout* 42 *E.* 3. *Numb.* 26. *John at Lee* is Committed to the Tower, there to remain till he hath paid Fine and Ransom to the King, and at the King's will and pleasure.

50 *E.* 3. He is Awarded to Prison at the King's Will, and to be put to his Fine and Ransom according to the quality of his Trespass; who being brought before the Lords, they told him, his ill

Deeds

Deeds were ſo great, that he had not wherewith to make ſatisfaction; and he ſubmitted to the King's Grace: and the Lords Awarded all his Goods to be ſeized, and his Body to be in Priſon at the King's Will.

Eodem Anno, The Lord *Latimer* to make Fine and Ranſom at the King's Will, *Numb.* 28.

Item, *William Ellis* the like, *Num.*28.

John Peecher the like, *Num.* 33.

Cavendiſh Awarded 7 *R.* 2. to pay Dammages to the Chancellor, and to remain in Priſon until, *&c.* and the King *de Fine ſuo competenti ſibi inde debito*; but not ſet down how much to the King.

Theſe Fines were not put in certain, for that the Law limits them to the King's Will: But no doubt but after the Judgment, the Lords did rate them; as may be gathered out of *Richard Lyons*; where, after Judgment, they called him before them, to conſider, it ſeems, at what Rate to Tax the ſame. And they found it not ſufficient.

And in Ancient *Court-Barons*, the Amerciaments were ever offered after the Preſentments. In

In the *Star-Chamber*, all Fines were uſually mitigated after the Cenſure, and that Court had *Antiqua Veſtigia Magni Conſilii.*

I hold that anciently the Fines were often Rated or Taxed: And if the Lords may mitigate a Fine *à Majore*, they may Tax it after the Judgment, the Certainty not being then ſpecified.

Judgments for Satisfaction.

Judgm. for Satisfaction.

In Complaints of Extortion and Oppreſſion, the Lords Awarded Satisfaction to the Parties wronged, which ſometimes was certain, ſometimes general, but always *ſecundum, non ultra Legem.*

42 *E.* 3. *Numb.* 18. Full Reſtitution was made unto *William Latimer* of the Wardſhip and Marriage of the Heir of Sir *R. Latimer*, whereof he was outed by Dureſs by *John at Lee.* But this was done by a great Councel *per Commandment du Roy*, after the *Judgment.*

William Ellis, 50 *E.* 3. Awarded to pay to *Botheil* and *Cooper* 20 *l.* apiece, for their Damages, *Num.* 25.

John Peecher, *Num.* 23. Awarded *que*

il

il face jealx a les parties Compl. de lui pour les extortions iſſint prizes.

Jo. Nevile, Num. 34. is Awarded to make Reſtitution to the Lady *Ravenſholme* in Certainty for an Oppreſſion done to her, whereof the Commons complained.

7 *R.* 2. The Parliament referred the baſe Accuſation of *Cavendiſh* againſt the Lord Chancellor, to be heard and determined by the Juſtices, in ſuch ſort as if the Parliament had determined the ſame. And the Juſtices adjudged him convict of Slander; and that the Lord Chancellor ſhould recover his Damages, which they Taxed at 1000 Marks, and that he be impriſoned until he had ſatisfied the Chancellor, and the King *pro Fine competenti ſibi inde debito.*

The Iudgment againſt *Alice Peirce, Anno* 10 *R.* 2. was, That if ſhe had purchaſed any Lands by Force or Dureſs, *ſoit il pur Fine*, or *Deed en pais*, or Deed enrolled, or otherwiſe, that her Purchaſe be held for none, and the parties

parties who hold themſelves aggriev'd, have their Proceſs againſt her in *Chancery*. By Advice of the Grand Councel, Let Right be done to the Parties, and Reſtitution made according as the Caſe requireth, ſo as the Purchaſe made *bona fide*, be not undone or annulled any way.

References to the Common Law.

Nor could the Lords judge any Complaint of private perſons, where the party might have his Remedy at the Common Law; *prout Botheil & Cooper Anno* 50 *E.* 3. accuſed *William Ellis* for extorting 17 Nobles from certain Merchants at *Pruſe*; and alſo for their wrong Impriſonment, by the falſe Suggeſtion of *William Ellis* to the King. And the Lords referred the taking of the 17 Nobles to the Common Law. But upon the Examination of the Impriſonment, it was proved, That *Ellis* did write his Letters to one of the King's Bed-Chamber, falſly ſuggeſting againſt *Botheil* and *Cooper*, which Letters were ſhewn to the King, his Majeſty then commanded them to be Committed.

This

This the Lords expounded to be falſe Suggeſtion in *Ellis*. The King himſelf judged him for the ſame.

Had that Point been cleared in the Statute of *Falſe Suggeſtions*, haply the Lords would have referred it to its proper place.

So alſo, *Anno* 5. *E.* 2. The Lords referred the Accuſation of *Clingdon*, to be Tried at the Common Law.

Touching the Demand.

Secondly, *Touching the Demand.*

That verily belongs to the Party at whoſe Suit it is; To the King's Councel for the King, if the Articles were *de part le Roy*; and to the Commons, againſt an Impeached Delinquent.

By whom Judgment ought to be rendred.

By whom Judgment ought to be Rendred.

It appeareth plainly by many Precedents, That all Iudgments for Life and Death, are to be rendred by the Steward

Steward of *England*, or by the Steward of the King's Houſe; and this is the Reaſon why at every Parliament, the King makes a Lord Steward of his Houſe, though he hath none out of Parliament. And at ſuch Arraignment, the Steward is to ſit in the Chancellor's place: And all Judgments for Miſdemeanors by the Chancellor, or by him who ſupplies the Chancellor's place.

CHAP. VI.

The Precedents for Life and Death.

The Precedents of Life and Death.

Anno 10 *R.* 2. *John* Lord *Gomeniz*, and *William Weſton* were brought by the Conſtable of the Tower before the Lords in Full Parliament, ſitting in the *White Chamber*; where they were ſeverally Arraigned at the Commandment of the Lords, by *Richard le Scroop*, Chief Steward of the Houſe of our Lord the King, in manner following:

Here the Lords commanded the Arraignment of certain Earls, Peers of the Realm: They did not appoint the Steward to do it: It belonged to his Office.

Anno 20 *R.* 2. *Thomas Haxey* was Arraigned of High Treaſon before the King, the Lords and Commons in full Parliament, *in Alba Camera*, by the Duke of *Lancaſter Seneſchallum Angliæ*, and the *Judgment* rendred by him.

Anno

Anno 21 *R.* 2. All thoſe Judgments on the Appeal were rendred *per Seneſchallum Angliæ.* The Records of *E.* 3. and *H.* 4. are ſilent herein, by whom the Judgment was rendred.

It may be Objected, That *Anno* 5. *H.* 4. *Obj.* The Lord Chancellor kept his place at the Trial of the Earl of *Northumberland*, becauſe he did deliver the Opinion of the Lords.

That could not properly be called a Trial; for it was upon the Earl's own Petition. And if it were reſolved whether it were Felony or Treaſon, it ſhould have been done by the Steward, ſitting in the Chancellor's place. Neither doth it appear by the Record, that the Chancellor kept his place, though he afterwards delivered the Opinion of the Lords.

So likewiſe, *Anno* 1 *Car.* 1. *Febr.* 6. The Lord Keeper kept his place when the Articles of Treaſon were read againſt the Earl of *Briſtol*; but he did not Arraign him. Then they were read, and his Anſwer heard by the appointment of the Houſe, and ſome Wit-

neſſes examined alſo, to the end they might underſtand the true Nature of his Offence, and then to declare how, and in what manner to proceed againſt him for the ſame.

The Spiritualty did not deliver their Opinion therein.

To conclude, All Records that are (which mention by whom the Delinquents in Caſes Capital were Arraigned) do ſay that it was by the Steward of *England*, or of the King's Houſe. And in remembrance of this, a Lord Steward is appointed at every Trial of a Peer of Parliament.

Touching Judgment rendred by the Chancellor in Caſes of Miſdemeanors, it is needleſs to recite any Precedents: only this I will ſay, The Chancellor never gave Judgment on Life and Death, and the Steward never on Miſdemeanors.

And though there be Precedents of Judgments given by the Steward of *England* in Parliament, *prout* 20 & 21 *R.* 2. yet I have ſeen none of the Judgments on the Peers rendred by the Stew-

Steward of the King's Houſe: And the reaſon may be, for that there was anciently a *Seneſchallus Angliæ*. *Quære tamen* whether the Steward of the King's Houſe, being a Peer, may give Judgment on a Peer or not. I think he may, if there be no Steward of the Houſe conſtantly made every Parliament, though but during the Seſſions.

The laſt Conſiderable Thing in Judicature is,

CHAP. VII.

The Execution of the Judgment.

AND firſt in Capital Offences, I have ſeen but two Precedents thereof in the Parliament-Rolls.

The Firſt is, 4 *E.* 3. Which begun on *Monday* after the Feaſt of S. *Katherine*. There were long Articles exhibited againſt *Mortimer* for Treaſon, and he was adjudged to die for Treaſon; and thereupon, ſaith the Record, Commandment was given to the Earl Marſhal to Execute the Judgment; and alſo to the Mayor, Aldermen and Sheriffs of the City of *London*, and to the Conſtable of the Tower, and likewiſe to them who had the Guard of the ſaid *Mortimer*, to be aiding to the ſaid Earl Marſhal, to do the ſaid Execution. The which Execution was done and performed upon *Thurſday*, next after the firſt Day of the Parliament, which was the 29*th*. Day of *November*. *Ibid.*

Ibidem Num. 2. Judgment was given on *Simon de Bereford*, to be Drawn and Hang'd: And thereupon it was Commanded that the Marſhal ſhould do Execution near the Tower of *London*. And the ſaid Earl of *Arundel* was Beheaded ou the ſame Day. The Earl of *Nottingham*, one of the Lords Appellants, was Lord Marſhall at that time, and therefore his Deputy did Execution.

Item, The Earl of *Warwick* being adjudged to die, the King did pardon the Execution, and granted him his Life, *viz.* That he ſhould remain in perpetual priſon out of *England*, in the Iſle of *Man*, *&c.* And that he be at Sea on his paſſage, before the end of one Month. And thereupon he was delivered to Monſieur *William le Scroope*, and to Monſieur *Stephen* his Brother, to bring him ſafely to the ſaid Iſle of *Man*, &c.

The Earl Marſhal was Commanded to Execution on a Peer, and the Marſhal on a Commoner.

The Command no doubt iſſued from the Lords, with the King's Aſſent herein.

Thus much touching Execution *quoad Mortem.*

In Miſdemeanors, the greateſt Corporal puniſhment hath been Impriſonment. I find no other in Ancient Parliament: But who was the Officer to carry the Delinquent to priſon, is not Recorded, ſave he to whoſe Cuſtody he was Committed, *prout* 42 *E.* 3. *John at Lee* was Committed to the Tower. *Et dit fuit al Monſieur* Alley *de* Buxhill, *Conſtable de la Tower, que il preiſt* with the King.

Anno 50 *E.* 3. *Numb.* 28, *&* 29. The Lord *Latimer* is Awarded to priſon, *deſtre en guard du Marſhal*; and afterwards upon Mainpriſe of diverſe Earls, ſuffered to go at large. So it ſeemeth that firſt he was Committed, and delivered to the Earl Marſhal immediately.

Primo R. 2. *William Fitz-Hugh* was Committed to the Tower, but it appeareth not who carried him thither. At this Day the Lords have uſed to impoſe ſome Corporal puniſhment on Miſdemeanors, *prout Flood.*

And

And at this Day if a Peer be Committed to priſon, the Gentleman Uſher hath the Charge of him thither, and the Serjeant attending on the Great Seal, *prout Anno* 18 *Jac.* 16 Febr. The Earl of *Berks* was ſent to the *Fleet* by the Gentleman-Uſher, for forcibly thruſting the Lord *Scroop* in open Houſe.

Anno 21 *Jac.* 13 Maii. The Earl of *Middleſex* was Committed to the Tower, and a Warrant given to the Gentleman Uſher to carry him thither.

Anno 1 *Car.* 1. In the Parliament begun 6 *Febr.* The Gentleman-Uſher was commanded to bring the Earl of *Bri-* *Briſtol.*

But if a Commoner be Committed, the Serjeant at Arms attending on the Great Seal doth uſually carry him to priſon, and he alſo hath the Charge of him, and to ſee any Corporal puniſhment inflicted on him.

Anno

Anno 18 *Jac*, *Wright* and two Serjeants at Mace, who had Arrested a Servant to the——— were Censured to ride with Papers on their Heads, for their wilful Contempt and Scorn of the Priviledges of Parliament, And for that the Serjeant at Arms did not see the whole punishment Executed on them, he himself was Committed.

Anno

CHAP. VIII.

For Recovery of Damages, or Reſtitution of the Party aggrieved.

Anno 50 *E.* 3. *Botheile* and *Cooper* had each of them twenty pounds Awarded for their Damages; and it is not there declared how they ſhould recover the ſame.

In the ſame year *John* Lord *Nevile*, upon Complaint of the Commons, is awarded to make Reſtitution to the Executors of the Lady *Ravenſholme*; neither when the ſame is to be reſtored, nor the manner how the ſame ſhall be recovered, is declared.

In thoſe two Caſes, I conceive the Parties are to have their Remedy (the Parliament being ended) in the *Chancery*, and not in any other Inferior Court at the Common Law: But the Lords in Parliament may direct how it ſhall be Levied.

Anno

Anno 1 *R.* 2. The Lords adjudged *Alice Peirce* to forfeit all her Lands and Goods to the King; and notwithſtanding this Forfeiture, If ſhe hath purchaſed any Lands by Force or Dureſs, it ſhall be void, and the Party grieved to have his Remedy by Proceſs in the *Chancery*, and by Advice of the Lords of the Councel, Let Right be done, and Reſtitution made.

Anno 7 *R.*2. *John Cavendiſh* was awarded to pay 1000 Marks to the Lord Chancellor for his Damages, and to remain in Priſon until he had paid it.

FINIS.

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